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Contents

Federal Register

Vol. 79, No. 147

Thursday, July 31, 2014

Agricultural Research Service
NOTICES
Meetings:
U.S. Sheep Experiment Station in Dubois, ID, 44383–44384

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44383

Air Force Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44427–44428

Animal and Plant Health Inspection Service
RULES
National Poultry Improvement Plan and Auxiliary Provisions, 44263

Bureau of the Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
TreasuryDirect System, 44491

Centers for Disease Control and Prevention
NOTICES
Fees for Sanitation Inspections of Cruise Ships, 44454–44455

Coast Guard
RULES
Drawbridge Operations:
Gulf Intracoastal Waterway, Treasure Island, FL, 44286–44288
Safety Zones:
Gulf Intracoastal Waterway, Mile Marker 49.0 to 50.0, West of Harvey Locks, Bank to Bank, Bayou Blue Pontoon Bridge, Lafourche Parish, LA, 44288–44291

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contests, Challenges, and Awards, 44420–44421
Safety Standard for Toddler Beds, 44420

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Application of Certain Clauses to Acquisitions of Commercial Items, 44313–44314
Domestically Nonavailable Articles—Elimination of DoD—Unique List, 44314
Use of Military Construction Funds in Countries Bordering the Arabian Sea, 44314–44316

Defense Department
See Air Force Department
See Defense Acquisition Regulations System
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44421
Arms Sales, 44421–44426
Civilian Physicians and Dentists Clinical Specialties and Tables; Correction, 44426
Meetings:
Independent Review Panel on Military Medical Construction Standards, 44426–44427

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Health Education Assistance Loan Program; Lender's Application for Insurance Claim, 44428–44429
Federal Student Financial Assistance Programs:
Experiments under the Experimental Sites Initiative, 44429–44436
Performance Partnership Pilots for Disconnected Youth, 44436–44438

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Applications to Export Liquefied Natural Gas:
Gasfin Development USA, LLC, 44439–44441
Meetings:
Quadrennial Energy Review, 44442–44443
Secretary of Energy Advisory Board; Corrections, 44441–44442

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Texas; Control of Air Pollution From Nitrogen Compounds, 44299–44302
Protection of Stratospheric Ozone:
2014 and 2015 Critical Use Exemption from the Phaseout of Methyl Bromide, 44302–44312
PROPOSED RULES
Accidental Release Prevention Requirements:
Risk Management Programs Under the Clean Air Act, 44604–44633
Greenhouse Gas Reporting Program:
Global Warming Potentials, 44332–44352

NOTICES
Fine Particulate National Ambient Air Quality Standards:
Adequacy Status of the Maintenance Plan for the Baltimore, MD; Transportation Conformity Purposes, 44451–44452
Proposed Consent Decrees Under the Clean Air Act, 44452–44453

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Bombardier, Inc. Airplanes, 44268–44270
Establishment of Class E Airspace:
Needles, CA, 44270–44271
PROPOSED RULES
Interest in Restructure of Rotorcraft Airworthiness Standards, 44320–44321
Special Conditions:
SNECMA, Silvercrest–2 SC–2D; Rated 10-Minute One Engine Inoperative Takeoff Thrust at High Ambient Temperature, 44321–44324
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Landing Area Proposal, 44485
Use of Certain Personal Oxygen Concentrator Devices on Board Aircraft, 44486

Federal Communications Commission
RULES
Comprehensive Review of Licensing and Operating Rules for Satellite Services; Correction, 44312
PROPOSED RULES
Connect America Fund; ETC Annual Reports and Certifications, 44352–44363

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44443–44445
Applications:
Alabama Power Co., 44446–44447
Algonquin Gas Transmission, LLC, 44447–44448
Woodland Pulp, LLC, 44445–44446
Environmental Assessments; Availability, etc.:
Dominion Transmission, Inc., Proposed Clarington Project, 44448–44450
Filings:
Protection System Maintenance Reliability Standard, 44450
Preliminary Permit Applications:
Haiwee Ridge Pumped Storage Project, 44450–44451

Federal Maritime Commission
NOTICES
Ocean Transportation Intermediary License Applicants, 44453–44454
Ocean Transportation Intermediary License Revocations and Terminations, 44454

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 44454

Federal Retirement Thrift Investment Board
RULES
Aged Beneficiary Designation Forms; Corrections, 44261

Federal Trade Commission
RULES
Use of Prenotification Negative Option Plans, 44271–44276

Fish and Wildlife Service
RULES
Papahanaumokuakea Marine National Monument, 44316–44317
PROPOSED RULES
Migratory Bird Hunting:
Frameworks for Early Season Hunting Regulations; Meetings, 44580–44601
NOTICES
Endangered Species Recovery Permit Applications, 44455–44459
Suspension of Imports:
Zimbabwe Elephant Trophies Taken in 2014, 44459–44461

Food and Drug Administration
RULES
New Animal Drugs:
Bacitracin Methylene Disalicylate; Dinoprost Solution; Gonadorelin Hydrochloride; et al., 44277–44278

Foreign-Trade Zones Board
NOTICES
Application for Subzone Status:
ASML US, Inc., Foreign-Trade Zone 76, Wilton and Newtown, CT, 44389
Reorganizations under Alternative Site Framework:
Foreign-Trade Zone 57, Charlotte, NC, 44390
Foreign-Trade Zone 60, Nogales, AZ, 44389–44390

Forest Service
RULES
Law Enforcement Support Activities, 44293–44296
Notice, Comment, and Appeal Procedures:
National Forest System Projects, Activities; Project-Level Predecisional Administrative Review Process, 44291–44293
PROPOSED RULES
Sale and Disposal of National Forest System Timber:
Forest Products for Traditional and Cultural Purposes, 44327–44332
NOTICES
List of Newspapers Used for Publication of Legal Notices:
Intermountain Region; Utah, Idaho, Nevada, and Wyoming, 44384–44385

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Material Advisor Penalty for Failure to Furnish Information Regarding Reportable Transactions, 44282–44286

Segregation Rule Effective Date, 44280–44282
PROPOSED RULES
Segregation Rule Effective Date, 44324–44325

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews, 44390–44393
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Crystalline Silicon Photovoltaic Products from Taiwan, 44395–44397
Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China, 44402–44403
Crystalline Silicon Photovoltaic Products from the People's Republic of China, 44399–44402
Ferrosilicon from the Russian Federation, 44393–44394
Ferrosilicon from Venezuela, 44397–44399

International Trade Commission
NOTICES
Complaints:
Certain Noise Cancelling Headphones and Components Thereof, 44462–44463

Justice Department
RULES
Supplemental Standards of Ethical Conduct for Employees, 44261–44263
NOTICES
Consent Decrees under the Clean Water Act, 44463–44464
Settlements under the Clean Water Act, 44464

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Idaho Falls District Resource Advisory Council, 44462
Plats of Survey:
Oregon/Washington, 44462

Millennium Challenge Corporation
RULES
Touhy Regulations, 44278–44280

Mine Safety and Health Administration
PROPOSED RULES
Criteria and Procedures for Assessment of Civil Penalties, 44494–44518

National Highway Traffic Safety Administration
PROPOSED RULES
Schedule of Fees, 44363–44369
NOTICES
Petitions for Motor Vehicle Defects; Denials, 44486–44491

National Oceanic and Atmospheric Administration
RULES
Papahanaumokuakea Marine National Monument, 44316–44317
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment, 44369–44372
Fisheries of the Exclusive Economic Zone off Alaska:
Monitoring and Enforcement; At-sea Scales Requirements, 44372–44382
NOTICES
Fisheries of the Exclusive Economic Zone Off Alaska:
Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program, 44403
Meetings:
Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud, 44404–44405
Privacy Act; Systems of Records, 44405–44407
Takes of Marine Mammals Incidental to Specified Activities:
Breakwater Replacement Project in Eastport, ME, 44407–44420
Marine Geophysical Survey in the Northwest Atlantic Ocean offshore North Carolina, September to October 2014, 44550–44578

Natural Resources Conservation Service
NOTICES
Meetings:
Agricultural Air Quality Task Force, 44385–44386

Navy Department
NOTICES
Exclusive Patent Licenses:
NCP Coatings, Inc., 44428
VIC Technology Venture Development, LLC, 44428

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
Transnuclear, Inc. NUHOMS HD Cask System, Certificate of Compliance No. 1030, Amendment No. 2, 44264–44267
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
Transnuclear, Inc. NUHOMS HD Cask System, Certificate of Compliance No. 1030, Amendment No. 2, 44318–44320
NOTICES
Environmental Assessments; Availability, etc.:
Florida Power and Light Co.; Turkey Point Nuclear Generating Unit Nos. 3 and 4, 44464–44470
Evidentiary Hearings:
Strata Energy, Inc., Ross In Situ Recovery Uranium Project, 44471–44472
License Exemptions:
Uranium One USA, Inc., 44472–44474

Personnel Management Office
NOTICES
Excepted Service, 44474–44477

Presidential Documents
PROCLAMATIONS
Special Observances:
Anniversary of the Americans with Disabilities Act (Proc. 9148), 44251–44252
Minority Enterprise Development Week (Proc. 9149), 44253–44254
National Korean War Veterans Armistice Day (Proc. 9150), 44255–44256
World Hepatitis Day (Proc. 9151), 44257–44258
ADMINISTRATIVE ORDERS
Lebanon; Continuation of National Emergency (Notice of July 29, 2014), 44259

Rural Housing Service
NOTICES
Rural Development Voucher Program, 44386–44389

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
EDGA Exchange, Inc., 44479–44480
EDGX Exchange, Inc., 44477–44479, 44520–44548
Options Clearing Corp., 44480–44483

Social Security Administration
RULES
Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge; Expiration Date Extension; Correction, 44276
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44483–44485

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Bureau of the Fiscal Service
See Internal Revenue Service
PROPOSED RULES
Gulf Coast Restoration Trust Fund, 44325–44326

Veterans Affairs Department
RULES
Servicemembers' Group Life Insurance and Veterans' Group Life Insurance:
Accelerated Benefits Option, Applications, and Disability Extension, 44297–44299

Separate Parts In This Issue

Part II
Labor Department, Mine Safety and Health Administration, 44494–44518

Part III
Securities and Exchange Commission, 44520–44548

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 44550–44578

Part V
Interior Department, Fish and Wildlife Service, 44580–44601

Part VI
Environmental Protection Agency, 44604–44633

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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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.

3 CFR

Proclamations:

9148 44251
9149 44253
9150 44255
9151 44257

Administrative Orders:

Notices:
Notice of July 29, 2014 44259

5 CFR

1651 44261
3801 44261

9 CFR

56 44263
145 44263
146 44263
147 44263

10 CFR

72 44264

Proposed Rules:

72 44318

14 CFR

39 44268
71 44270

Proposed Rules:

27 44320
29 44320
33 44321

16 CFR

425 44271

20 CFR

405 44276

21 CFR

520 44277
522 44277
529 44277
558 44277

22 CFR

1305 44278

26 CFR

1 44280
301 44282

Proposed Rules:

1 44324

30 CFR

Proposed Rules:

100 44494

31 CFR

Proposed Rules:

34 44325

33 CFR

117 44286
165 44288

36 CFR

215 44291
218 44291
262 44293

Proposed Rules:

223 44327

38 CFR

9 44297

40 CFR

52 44299
82 44302

Proposed Rules:

68 44604
98 44332

47 CFR

25 44312

Proposed Rules:

54 44352

48 CFR

211 44313
212 44313
225 (2 documents) 44314
232 44313
236 44314

49 CFR

Proposed Rules:

594 44363

50 CFR

404 44316

Proposed Rules:

20 44580
622 44369
679 44372

Federal Register
Vol. 79, No. 147
Thursday, July 31, 2014

Presidential Documents

Title 3—

The President

Proclamation 9148 of July 25, 2014

Anniversary of the Americans with Disabilities Act, 2014

By the President of the United States of America

A Proclamation

Over two decades ago, Americans—some in wheelchairs, some using sign language, and all with an abiding belief in our Nation's promise—came together to strengthen our commitment to equality for all. At a time when people with disabilities were turned away at movie theaters, rejected for employment, and measured by what so many thought they could not do, leaders and activists refused to accept the world as it was. In small towns and big cities, they spoke out. They staged sit-ins, authored discrimination diaries, and scaled the Capitol steps. Finally, they realized their call for simple justice in one of the most comprehensive civil rights bills in our country's history. On the anniversary of the Americans with Disabilities Act (ADA), we honor those who fought against discrimination, and we recommit to tearing down barriers and guaranteeing all Americans the right to pursue their own measure of happiness.

The ADA promises equal access and equal opportunity—regardless of ability. It secures each person's right to an independent life, and it enables our country and our economy to benefit from the talents and contributions of all Americans.

Even as we commemorate this milestone, we recognize that too often, casual discrimination or fear of the unfamiliar still prevent disabled Americans from achieving their full potential. That is why my Administration is pushing to fulfill the promise of and better enforce the ADA. Fifteen years after the Olmstead decision—in which the Supreme Court ruled it discrimination to unjustifiably institutionalize someone with a disability—we have increased the number of homes integrated into communities that are available for persons with disabilities. Under the Affordable Care Act, insurance companies are banned from discriminating on the basis of pre-existing conditions, medical history, or genetic information. Expanding on my Executive Order to establish the Federal Government as a model employer of individuals with disabilities, my Administration is also providing Federal contractors with the tools and resources to recruit, retain, and promote people with disabilities.

The nearly one in five Americans living with a disability are our parents, children, neighbors, colleagues, and friends. They are entitled to the same rights and freedoms as everyone else. Today, we celebrate their accomplishments, stand against discrimination in all its forms, and honor all who sacrificed so future generations might know a more equal society.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 26, 2014, the Anniversary of the Americans with Disabilities Act. I encourage Americans across our Nation to celebrate the 24th anniversary of this civil rights law and the many contributions of individuals with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–18143
Filed 7–30–14; 8:45 am]
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Presidential Documents

Proclamation 9149 of July 25, 2014

Minority Enterprise Development Week, 2014

By the President of the United States of America

A Proclamation

Our Nation thrives when we fulfill the promise of opportunity for all—when each of us has the same chance to succeed, when every American can find pride and independence in their work, when our shared prosperity rests upon the broad shoulders of a rising middle class. With talent, dedication, and bold ideas, minority entrepreneurs reach for that promise. They bring jobs and services to communities across our country. They innovate and create. They open new markets to goods stamped ''Made in the U.S.A.'' During Minority Enterprise Development Week, we celebrate their essential role in our economy and our communities.

Minority-owned businesses employ millions of Americans, and my Administration is proud to invest in their success. We have increased access to contracts and capital, reduced burdensome paperwork, and connected more minority enterprises to booming export markets. Since I took office, my Administration has made more loans to small business owners than any other. By hosting workshops and through *www.Business.USA.gov,* we are empowering minority entrepreneurs with the tools to help their businesses grow.

America's great strength lies in our diversity—of people, perspectives, and ideas. We cannot succeed when a shrinking few do very well and a growing many barely make it. But if we invest in small businesses and give all our entrepreneurs a chance to compete, new opportunities will open, and we will flourish—as individuals and as a Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 27 through August 2, 2014, as Minority Enterprise Development Week. I call upon all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the many contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–18160
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Presidential Documents

Proclamation 9150 of July 25, 2014

National Korean War Veterans Armistice Day, 2014

By the President of the United States of America

A Proclamation

More than six decades ago, courageous Americans joined Korean patriots as they defended their right to decide their own fate. They fought through mud, snow, and heavy fire. As they stood firm against the tide of Communism, nearly 37,000 Americans gave their last full measure of devotion. Thanks to all who served and all who died, allied forces pushed invading armies back across the 38th parallel, and on July 27, 1953, they secured a hard-earned victory. On National Korean War Veterans Armistice Day, we honor the men and women who sacrificed so a people they had never met would know the blessings of liberty and security.

Yet our gratitude is not enough. As a Nation, we must do more to keep faith with our veterans and the families that stand with them always. Just as they have done their duty, we must do ours. We will never waver in our commitment to fully account for the captured and the missing, nor will we ever stop striving to give our veterans the care and opportunities they have earned.

As we salute the men and women who made this victory possible, we reflect on the open and prosperous society that is their enduring legacy. The Republic of Korea has risen from occupation and ruin to become one of the world's most vibrant democracies. While carefully defending the peace won 61 years ago, the South Korean people have built an advanced, dynamic economy. Today, the alliance between the United States and the Republic of Korea—forged in war and fortified by common ideals—remains as strong as ever.

This progress was not an accident. It reminds us that liberty and democracy do not come easily; we must win them, tend to them constantly, and defend them without fail. As we mark this anniversary, let us show the full care and support of a grateful Nation to every service member who fought on freedom's frontier.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 27, 2014, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor our distinguished Korean War veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–18164
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Presidential Documents

Proclamation 9151 of July 25, 2014

World Hepatitis Day, 2014

By the President of the United States of America

A Proclamation

Around the world, one in twelve people are living with viral hepatitis. In the United States, millions of Americans are infected with this life-threatening disease, with more than two-thirds unaware of their infection status. Viral hepatitis can persist undetected for many years before revealing any symptoms, leading to long-term liver damage and thousands of American deaths each year. As we mark World Hepatitis Day, we strengthen our resolve to defeat this silent epidemic.

All forms of viral hepatitis pose serious health threats, but building public awareness can help prevent new cases and more effectively treat this disease. A safe and effective vaccine protects against hepatitis A and B. While there is no vaccine for hepatitis C, early detection and therapy can prevent liver damage, cirrhosis, and liver cancer; reduce the risk of death; and potentially cure the infection.

Though this disease can affect anyone, viral hepatitis impacts certain communities more than others. African Americans, American Indians, Asian American and Pacific Islanders, the baby boomer generation (those born between 1945 and 1965), and people living with HIV are all disproportionately affected by viral hepatitis. Incidence rates are also higher among people who inject drugs. We must ensure these hardest hit populations have information about screening, preventing, and treating viral hepatitis. And we must do more to address related health issues such as HIV and substance abuse.

Through the Affordable Care Act, my Administration has made major strides in expanding access to viral hepatitis prevention, care, and treatment. New health plans must now cover hepatitis C routine screening for individuals at high-risk and one-time screening for adults born between 1945 and 1965. These preventive services will allow more Americans to know their status and seek treatment.

Earlier this year, my Administration updated our Nation's first-ever comprehensive Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis. Alongside Federal, private, and non-profit stakeholders across our country, we will continue to strengthen our Nation's response. Together, we can raise awareness, reduce the number of new cases, and save lives.

Thanks to the tireless leadership of researchers and advocates, we are beginning to break the silence surrounding viral hepatitis. Today, we once again raise our voices, educate our at-risk communities, and support those living with this disease.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 28, 2014, as World Hepatitis Day. I encourage citizens, Government agencies, non-profit organizations, and communities across the Nation to join in activities that will increase awareness about hepatitis and what we can do to prevent it.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand fourteen, and of the

Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–18167
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Presidential Documents

Notice of July 29, 2014

Continuation of the National Emergency With Respect to Lebanon

On August 1, 2007, by Executive Order 13441, the President declared a national emergency with respect to Lebanon pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty. Such actions contribute to political and economic instability in that country and the region.

Certain ongoing activities, such as continuing arms transfers to Hizballah that include increasingly sophisticated weapons systems, serve to undermine Lebanese sovereignty, contribute to political and economic instability in Lebanon, and continue to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2014. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Lebanon declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,

July 29, 2014.

[FR Doc. 2014–18217

Filed 7–30–14; 8:45 am]

Billing code 3295–F4

Rules and Regulations

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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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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Aged Beneficiary Designation Forms

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule; correcting amendments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) published in the **Federal Register** of July 9, 2014, a document amending its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than one year after the date of the participant's signature. This document corrects the authority citation and paragraph designations provided in the July 9, 2014 publication.

DATES: The correcting amendments are effective on July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency published a document (FR Doc. 2014–16043) in the **Federal Register** of July 9, 2014, (79 FR 38747), amending its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than one year after the date of the participant's signature. This document simply corrects the authority citation and paragraph designations provided in FR Doc. 2014–16043.

List of Subjects in 5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

For the reasons stated in the preamble, the Agency corrects 5 CFR chapter VI by making the following correcting amendments:

PART 1651—DEATH BENEFITS

■ 1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 2. Amend § 1651.3 by:
■ a. Removing the word ''and'' at the end of paragraph (c)(7);
■ b. Removing the period at the end of paragraph (c)(8) and adding in its place ''; and''; and
■ c. Adding paragraph (c)(9) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c)* * *

(9) Be received by the TSP record-keeper not more than 365 calendar days after the date of the participant's most recent signature.

* * * * *

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 2014–17905 Filed 7–30–14; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF JUSTICE

5 CFR Part 3801

[2013R–4F]

Supplemental Standards of Ethical Conduct for Employees of the Department of Justice

AGENCY: Department of Justice.

ACTION: Final rule; amendments.

SUMMARY: The Department of Justice (DOJ), with the concurrence of the Office of Government Ethics, is amending its Supplemental Standards of Ethical Conduct for Employees of the Department of Justice (Supplemental Standards) to incorporate existing rules for Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) employees that had initially been adopted by the Department of the Treasury (Treasury) when the Bureau of Alcohol, Tobacco, and Firearms was within Treasury. These rules, which have continued to be applicable to ATF employees after the transfer of authorities to DOJ, are being incorporated without substantive change into DOJ's Supplemental Standards. Additionally, this final rule designates ATF as a separate agency for purposes of applying the gifts and the teaching, speaking, and writing provisions of the Standards of Ethical Conduct for Employees of the Executive Branch.

DATES: This rule is effective July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Denise R. Brown, Office of Regulatory Affairs, Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue NE., Washington, DC 20226, (202) 648–7105.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1992, the Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. In 1995, the Department of the Treasury (Treasury), with OGE's concurrence, established the Supplemental Standards of Ethical Conduct for Employees of the Treasury, which included additional rules for Bureau of Alcohol, Tobacco and Firearms employees. *See* 60 FR 22249–22255 (May 5, 1995), as codified at 5 CFR part 3101. In 1997, the Department of Justice (DOJ), with OGE's concurrence, established the Supplemental Standards of Ethical Conduct for Employees of the Department of Justice (Supplemental Standards). *See* 62 FR 23941–23943 (May 2, 1997), as codified at 5 CFR part 3801.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. Title XI, Subtitle B, Section 1111 of the Act which was effective

January 24, 2003, transferred the ''authorities, functions, personnel, and assets'' of the Treasury's Bureau of Alcohol, Tobacco and Firearms (the Bureau), to DOJ, with the exception of certain enumerated authorities retained by Treasury. Section 1111 of the Act (later transferred in relevant part and codified at 28 U.S.C. 599A) further provided that the Bureau retains its identity as a distinct entity within DOJ known as the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The authorities retained by Treasury include the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27 of the United States Code. The functions retained by Treasury became the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau (TTB).

As part of the separation, title 27 of the Code of Federal Regulations (CFR) was reorganized into two chapters, chapter I for TTB and chapter II for ATF. Reorganization of Title 27, Code of Federal Regulations, 68 FR 3744 (Jan. 24, 2003). The regulations were divided between the two chapters based upon the respective authorities of Treasury and DOJ.

At that time, DOJ did not amend its Supplemental Standards to incorporate Treasury's existing rules for employees of the Bureau. However, pursuant to section 1111(c)(1) of the Homeland Security Act, and 28 U.S.C. 599A(c)(1), the authorities and functions of the Bureau that the Secretary of the Treasury previously exercised when the Bureau was part of Treasury have been transferred to DOJ. Accordingly, the restrictions of section 3101.105 have continued to be applicable to ATF employees pursuant to this transfer of authorities. However, DOJ has now determined that it is appropriate to incorporate in its Supplemental Standards Treasury's existing regulatory restrictions for ATF employees at 5 CFR 3101.105.

Final Rule

This final rule incorporates the existing provisions of 5 CFR 3101.105 into the Supplemental Standards in a new section 3801.107. This action carries forward the prohibited financial interests rule that had initially been adopted when ATF was part of Treasury, and that has continued to be applicable to ATF employees after the transfer of ATF to DOJ. Now that ATF is part of DOJ, DOJ has determined that continuing to prohibit ATF employees from having financial interests in the alcohol, tobacco, firearms, or explosives industries is necessary for successful implementation of its ethics program. Prohibiting ATF employees from having financial interests in entities that are regulated or inspected by or closely connected to the work of ATF is important for three reasons: (1) To maintain ATF's appearance of impartiality and objectivity in the execution of its regulatory and law enforcement functions; (2) to eliminate a regulated entity's concern that sensitive information provided to ATF might be misused for private gain; and (3) to avoid the large-scale recusal of employees from official matters resulting in an inability of ATF to fulfill its mission.

Accordingly, the final rule incorporates those applicable ethics standards directly into the DOJ regulations. However, the new language in section 3801.107(b) regarding the granting of regulatory waivers omits reference to a provision of the Internal Revenue Code (26 U.S.C. 7214(b)) that no longer applies to ATF employees and substitutes new clarifying language that gives the agency designee authority to grant a written waiver of the prohibition in paragraph (a) based on a determination that the waiver is not inconsistent with law and the OGE Standards, and otherwise meets the waiver standard previously established in section 3101.105(b).

Additionally, this final rule will designate ATF as a separate agency for purposes of applying the gifts and the teaching, speaking, and writing provisions of the OGE Standards. Pursuant to section 2635.203(a) of the OGE Standards, an executive department, with the concurrence of OGE, may designate any component that exercises distinct and separate functions as a separate agency for the purpose of applying the rules governing the solicitation or acceptance of gifts from prohibited sources or given because of official position. *See* 5 CFR 2635.201–2635.205. Pursuant to section 2635.807(a)(2)(ii) of the OGE Standards, any component so designated is also considered a separate agency for the purpose of applying the rules governing the receipt of compensation by an employee for teaching, speaking, and writing. DOJ has determined that ATF exercises distinct and separate functions for purposes of applying sections 2635.201–2635.205 and section 2635.807(a)(2)(ii).

Statutory and Executive Order Reviews

Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation and in accordance with Executive Order 13563, ''Improving Regulations and Regulatory Review,'' section 1(b) General Principles of Regulation and section 6 Retrospective Analyses of Existing Rules. This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order 12866.

This rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. Accordingly, this rule is not an ''economically significant'' rulemaking as defined in Executive Order 12866.

Administrative Procedure Act (APA)

Notice and comment rulemaking is not required for this final rule. Under the APA, ''rules of agency organization, procedure or practice,'' 5 U.S.C. 553(b)(3)(A), that do not ''affect individual rights and obligations,'' *Morton v. Ruiz,* 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of section 553. *See JEM Broadcasting Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (section 553(b)(3)(A) applies to ''agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency''). The revisions to the regulations in 5 CFR part 3801 are purely a matter of agency organization, procedure, and practice that will not affect individual rights and obligations. Furthermore, internal delegations of authority are subject to an exception under the APA for ''rules of agency organization, procedure, or practice.''

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the

Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a rule for purposes of the reporting requirement of 5 U.S.C. 801.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Congressional Review Act

The Department of Justice has determined that this action pertains to agency management and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (CRA), (Subtitle E of the Small Business Regulatory Enforcement Fairness Act, (SBREFA)). Therefore, the reports to Congress and the General Accounting Office specified by section 801 of SBREFA are not required.

Drafting Information

The author of this document is Denise R. Brown, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 5 CFR Part 3801

Conflicts of interest.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, the Department of Justice, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 3801 as follows:

PART 3801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for 5 CFR part 3801 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App.; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 12988, 61 FR 4739; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.701–2635.705, 2635.803, 2635.807(a)(2)(ii); and DOJ Order 1200.1, Chap 11–1.

§ 3801.103 [Amended]

■ 2. Section 3801.103(a) is amended by adding ''Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)'' between ''Antitrust Division'' and ''Bureau of Prisons (including Federal Prison Industries, Inc.)'' on the list of ''Designation of separate Departmental components'' within the Department of Justice.

■ 3. Section 3801.107 is added to read as follows:

§ 3801.107 Additional rules for Bureau of Alcohol, Tobacco, Firearms, and Explosives employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco, Firearms, and Explosives and are in addition to §§ 3801.101 through 3801.106:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the Deputy Designated Agency Ethics Official, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which ATF's programs are administered. A waiver under this paragraph (b) may require appropriate conditions, such as execution of a written disqualification.

Dated: July 23, 2014.

Lee J. Lofthus,

Assistant Attorney General for Administration.

Dated: July 24, 2014.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2014–18028 Filed 7–30–14; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 56, 145, 146, and 147

[Docket No. APHIS–2011–0101]

RIN 0579–AD83

National Poultry Improvement Plan and Auxiliary Provisions

Correction

In rule document 2014–16037 appearing on pages 38752–38768 in the issue of Wednesday, July 9, 2014, make the following correction:

§ 147.21 [Corrected]

■ 1. In section 147.21, on page 38766, in the second column, the thirty-seventh through fortieth lines should read: ''Program Standards, as defined in § 147.51. Sanitation procedures may also be approved by the Administrator in accordance with § 147.53(d)(2).''

[FR Doc. C1–2014–16037 Filed 7–30–14; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2013–0269]

RIN 3150–AJ30

List of Approved Spent Fuel Storage Casks: Transnuclear, Inc. NUHOMS® HD Cask System, Certificate of Compliance No. 1030, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Transnuclear, Inc. NUHOMS® HD Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1030.

DATES: The final rule is effective October 14, 2014, unless significant adverse comments are received by September 2, 2014 in response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Please see the companion proposed rule for detailed instructions on submitting comments. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2013–0269 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–2013–0269. 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 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 (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. The proposed CoC, Technical Specifications (TSs), and preliminary safety evaluation report (SER) are available in ADAMS under Package Accession No. ML13322B445. The ADAMS Accession No. for the Transnuclear, Inc. NUHOMS® Cask System Amendment No. 2 application dated September 28, 2012, is ML12283A012.
- *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: Gregory R. Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Procedural Background
II. Background
III. Discussion of Changes
IV. Voluntary Consensus Standards
V. Agreement State Compatibility
VI. Plain Writing
VII. Environmental Assessment and Finding of No Significant Environmental Impact
VIII. Paperwork Reduction Act Statement
IX. Regulatory Flexibility Certification
X. Regulatory Analysis
XI. Backfitting and Issue Finality
XII. Congressional Review Act

I. Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1030 and does not include other aspects of the Transnuclear, Inc. NUHOMS® HD Cask System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on October 14, 2014. However, if the NRC receives a significant adverse comment by September 2, 2014 in response to the companion proposed rule published elsewhere in this issue of the **Federal Register**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

II. Background

The NRC is amending its spent fuel storage regulations by revising the Transnuclear, Inc. NUHOMS® HD Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to CoC No. 1030. Amendment No. 2 includes changes to: Increase the soluble boron concentration to 2,800 ppm for criticality safety analyses and add maximum enrichments for Combustion Engineering 14x14 fuel assemblies that were previously unauthorized for storage; improve clarity of certain TSs, such as heat load zoning configuration, fuel qualification table, fuel class, and intact fuel/damaged fuel definitions; allow for increased fuel assembly weight by 25 pounds; revise the definition of control components; include blended low enriched uranium fuel material; increase shielding effectiveness of the horizontal storage

module by adding optional dose reduction hardware; update licensing basis documents based on recent experience with ongoing licensing actions involving other NUHOMS® systems; and accommodate installation practices for a limiting gap size that was evaluated based on dose rates. In addition, the amendment makes editorial changes to the TSs.

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 11, 2006 (71 FR 71463), that approved the NUHOMS® HD Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1030.

III. Discussion of Changes

On September 28, 2012, Transnuclear Inc. submitted a request to the NRC to amend CoC No. 1030. Transnuclear, Inc. supplemented its request on the following dates: December 20, 2012 (ADAMS Accession No. ML12356A391) and July 25, 2013 (ADAMS Accession No. ML13210A074). Specifically, Transnuclear, Inc. requested changes to (1) increase the soluble boron concentration to 2,800 ppm for criticality safety analyses and add maximum enrichments for Combustion Engineering 14x14 fuel assemblies that were previously unauthorized for storage; (2) improve clarity of certain TSs, such as heat load zoning configuration, fuel qualification table, fuel class, and intact fuel/damaged fuel definitions; (3) allow for increased fuel assembly weight by 25 pounds; (4) revise the definition of control components; (5) include blended low enriched uranium fuel material; (6) increase shielding effectiveness of the horizontal storage module by adding optional dose reduction hardware; (7) update licensing basis documents based on recent experience with ongoing licensing actions involving other NUHOMS® systems; and (8) accommodate installation practices for a limiting gap size that was evaluated based on dose rates. In addition, the amendment makes editorial changes to the TSs.

As documented in the SER (ADAMS Accession No. ML13325B118), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

This direct final rule revises the NUHOMS® HD Cask System listing in 10 CFR 72.214 by adding Amendment No. 2 to CoC No. 1030. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The amended NUHOMS® HD cask design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into NUHOMS® HD Cask Systems that meet the criteria of Amendment No. 2 to CoC No. 1030 under 10 CFR 72.212.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 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 direct final rule, the NRC will revise the NUHOMS® HD Cask System design listed in 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. 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, 1988 (63 FR 31883).

VII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the Transnuclear, Inc. NUHOMS® HD Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to CoC No. 1030.

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the CoC for the NUHOMS® HD Cask System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Transnuclear, Inc. requested changes to revise authorized contents to: increase the soluble boron concentration to 2,800 ppm for criticality safety analyses and add maximum enrichments for Combustion Engineering 14x14 fuel assemblies that were previously unauthorized for storage; improve clarity of certain TSs, such as heat load zoning configuration, fuel qualification table, fuel class, and intact fuel/damaged fuel definitions; allow for increased fuel assembly weight by 25 pounds; revise the definition of control components; include blended low enriched uranium fuel material; increase shielding effectiveness of the horizontal storage module by adding optional dose reduction hardware; update licensing basis documents based on recent experience with ongoing licensing actions involving other NUHOMS® systems; and accommodate installation practices for a limiting gap size that was evaluated based on dose rates. In addition, the amendment makes editorial changes to the TSs.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 2 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

NUHOMS® HD Cask Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an Independent Spent Fuel Storage Installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in an SER which is available in ADAMS under Accession No. ML13325B118.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 2 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NUHOMS® HD Cask System in accordance with the changes described in proposed Amendment No. 2 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 2 to CoC No. 1030 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51.

Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, ''List of Approved Spent Fuel Storage Casks: NUHOMS® HD Cask System,'' will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this rule.

VIII. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

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.

IX. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities.

This direct final rule affects only nuclear power plant licensees and Transnuclear, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

X. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On December 11, 2006 (71 FR 71463), the NRC issued an amendment to 10 CFR part 72 that approved the NUHOMS® HD Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On September 28, 2012, and as supplemented on December 20, 2012, and July 25, 2013, Transnuclear, Inc., submitted an application to amend the NUHOMS® HD Cask System as described in Section III, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into NUHOMS® HD Cask Systems under the changes described in Amendment No. 2 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XI. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1030 for the Transnuclear, Inc. NUHOMS® HD Cask System, as currently listed in 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks.'' The revision consists of adding Amendment No. 2 to CoC No.1030, and Amendment No. 2 applies only to new casks fabricated and used under Amendment No. 2. These changes do not affect existing users of the NUHOMS® HD Cask System, and the current Amendment No. 1 continues to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 2, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 2 to CoC No. 1030 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

XII. Congressional Review Act

The Office of Management and Budget has not found this to be a major rule as defined in the Congressional Review Act.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

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 is revised 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 secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy 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 1030 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1030.

Initial Certificate Effective Date: January 10, 2007.

Amendment Number 1 Effective Date: March 29, 2011.

Amendment Number 2 Effective Date: October 14, 2014.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1030.

Certificate Expiration Date: January 10, 2027.

Model Number: NUHOMS® HD–32PTH.

* * * * *

Dated at Rockville, Maryland, this 23rd day of July, 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–18083 Filed 7–30–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0488; Directorate Identifier 2014–NM–141–AD; Amendment 39–17919; AD 2014–15–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. This AD requires revising the airplane flight manual to incorporate temporary revisions that introduce additional limitations for operation of taxi and landing lights. This AD was prompted by a determination that there is a potential for fuel leakage from auxiliary power unit (APU) boost pump component installations in the right-hand landing lights compartment. We are issuing this AD to advise the flightcrew of the limitations for taxi lights and landing lights to prevent heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, which could potentially ignite any fuel or fumes present in the right-hand landing lights compartment.

DATES: This AD becomes effective July 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 31, 2014.

We must receive comments on this AD by September 15, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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 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–2014–0488; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Morton Lee, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7355; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–17, dated June 17, 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–600–2B16 (CL–604 Variant) airplanes. The MCAI states:

> Bombardier Inc. has determined that there is a potential for fuel leakage from the auxiliary power unit (APU) boost pump component installations in the right hand landing lights compartment. On a hot day, the temperatures in the landing light compartment as result of the heat generated by the taxi lights and/or the landing lights on the ground, can reach the auto-ignition temperature of the fuel and may ignite any fuel/fumes present in the right hand landing light compartment.
>
> In order to mitigate the potential safety hazard, Bombardier Inc. has revised the Aircraft Flight Manual (AFM) through Temporary Revisions (TRs) 604/38 and 605/20 to introduce additional limitations for operation of the landing/taxi lights on the ground.
>
> This [Canadian] AD is being issued to mandate compliance with the revised AFM limits for landing/taxi light operations per the TR 604/38 and TR 605/20, as applicable for the affected aeroplanes.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0488.

Relevant Service Information

Bombardier has issued the following service information:

- Temporary Revision (TR) 604/38, dated June 16, 2014, to the Bombardier Challenger CL–604 Airplane Flight Manual, PSP 604–1; and
- TR 605/20, dated June 16, 2014, to the Bombardier Challenger CL–605 Airplane Flight Manual, PSP 605–1.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover

deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH in the Contacting the Manufacturer paragraph of this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because heat generated by the taxi lights and landing lights on the ground could reach the auto-ignition temperature of the fuel, which could potentially ignite any fuel or fumes present in the right-hand landing lights compartment. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0488; Directorate Identifier 2014–NM–141–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 AD.

Costs of Compliance

We estimate that this AD affects 169 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $14,365, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–17 Bombardier, Inc.: Amendment 39–17919. Docket No. FAA–2014–0488; Directorate Identifier 2014–NM–141–AD.

(a) Effective Date

This AD becomes effective July 31, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes,

certificated in any category, serial numbers 5301 through 5665 inclusive, and 5701 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel; and 33, Lights.

(e) Reason

This AD was prompted by a determination that there is a potential for fuel leakage from auxiliary power unit (APU) boost pump component installations in the right-hand landing lights compartment. We are issuing this AD to advise the flightcrew of the limitations for taxi lights and landing lights to prevent heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, which could potentially ignite any fuel or fumes present in the right-hand landing lights compartment.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 24 hours after the effective date of this AD, revise the AFM to incorporate the applicable temporary revisions (TRs) specified in paragraphs (g)(1) and (g)(2) of this AD. Operate the airplane according to the procedures in the TRs specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. The AFM revision required by paragraph (g) of this AD may be done by inserting a copy of TR 604/38, Taxi and Landing Lights, dated June 16, 2014, into the Bombardier Challenger CL–604 AFM, PSP 604–1; or a copy of TR 605/20, Taxi and Landing Lights, dated June 16, 2014, into the Bombardier Challenger CL–605 AFM, PSP 605–1. When these TRs have been included in the general revisions of the applicable AFM, the general revisions may be inserted in the AFM and the TRs may be removed, provided the relevant information in the general revision is identical to that included in TR 604/38, Taxi and Landing Lights, dated June 16, 2014; or TR 605/20, Taxi and Landing Lights, dated June 16, 2014; as applicable.

(1) TR 604/38, Taxi and Landing Lights, dated June 16, 2014, to the Bombardier Challenger CL–604 AFM, PSP 604–1 (for Bombardier Model CL–600–2B16 (604 Variant) airplanes, serial numbers 5301 through 5665 inclusive).

(2) TR 605/20, Taxi and Landing Lights, dated June 16, 2014, to the Bombardier Challenger CL–605 Airplane Flight Manual PSP 605–1 (for Bombardier Model CL–600–2B16 (604 Variant) airplanes, serial numbers 5701 and subsequent).

(h) 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–173, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 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) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–17, dated June 17, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0488.

(j) Material Incorporated by Reference

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

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

(i) Temporary Revision (TR) 604/38, Taxi and Landing Lights, dated June 16, 2014, to the Bombardier Challenger CL–604 Airplane Flight Manual, PSP 604–1.

(ii) TR 605/20, Taxi and Landing Lights, dated June 16, 2014, to the Bombardier Challenger CL–605 Airplane Flight Manual, PSP 605–1.

(3) 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.*

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

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

Issued in Renton, Washington, on July 24, 2014.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17910 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0987; Airspace Docket No. 13–AWP–19]

Establishment of Class E Airspace; Needles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Needles VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Needles, CA, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Los Angeles Air Route Traffic Control Center (ARTCC). This improves the safety and management of IFR operations within the National Airspace System.

DATES: Effective date, 0901 UTC, November 13, 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.

ADDRESSES: FAA Order 7400.9X, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Procedures Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Bill Nugent, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601

Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4518.

SUPPLEMENTARY INFORMATION:

History

On December 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Needles, CA (78 FR 78296). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from National Business Aviation Association in support of the proposal.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, the Needles VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Needles, CA, to accommodate IFR aircraft under control of Los Angeles Air Route Traffic Control Center (ARTCC) by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace the Needles VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Needles, CA.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6006 En route domestic airspace areas.

* * * * *

AWP CA E6 Needles, CA [New]

Needles VORTAC, CA
(Lat. 34°45′58″ N., long. 114°28′27″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°01′00″ N., long. 114°07′00″ W.; to lat. 34°56′00″ N., long. 113°38′00″ W.; to lat. 35°05′00″ N., long. 113°20′00″ W.; to lat. 35°04′30″ N., long. 113°18′00″ W.; to lat. 34°54′00″ N., long. 113°39′00″ W.; to lat. 34°40′00″ N., long. 114°00′00″ W.; to lat. 33°37′00″ N., long. 114°00′00″ W.; to lat. 33°36′00″ N., long. 114°10′00″ W.; to lat. 33°51′00″ N., long. 114°32′00″ W.; to lat. 34°05′00″ N., long. 114°32′00″ W.; to lat. 34°10′00″ N., long. 114°13′00″ W.; to lat. 34°24′00″ N., long. 114°18′00″ W.; to lat. 34°58′00″ N., long. 114°13′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 21, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–17803 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 425

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission has completed its regulatory review of the Trade Regulation Rule Concerning Use of Prenotification Negative Option Plans as part of the Commission's systematic review of all current Commission regulations and guides, and has determined to retain the Rule in its current form.

DATES: This action is effective as of August 1, 2014.

ADDRESSES: This document also is available on the Internet at the Commission's Web site, *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, (202) 326–2098, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 2009, the Federal Trade Commission (''FTC'' or ''Commission'') requested comments on its Rule Concerning the Use of Prenotification Negative Option Plans (''Negative Option Rule'' or ''Rule''), as part of its comprehensive regulatory review program.[1] Specifically, the Commission

[1] The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.*, all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments

Continued

sought comments on the Rule's costs and benefits, and on whether it should expand the Rule's scope to cover negative option features other than prenotification offers involving merchandise.

After considering the comments and recent legislative developments, the Commission has determined to retain the Rule without amendment. All commenters who addressed the issue support the Rule's current provisions. Furthermore, although commenters presented evidence of abusive negative option marketing beyond prenotification offers, the Restore Online Shoppers' Confidence Act (''ROSCA'') [2] and the Commission's proposed amendments to the Telemarketing Sales Rule (''TSR''),[3] discussed in section III.D below, likely address many of those abuses. Because the Commission has not seen the full effects ROSCA will have on the marketplace, and has yet to adopt and observe the effects of its proposed amendments to the TSR, it would be imprudent to expand the Rule's coverage at this time.[4]

This document provides background, analyzes the comments, and further explains the Commission's decision.

II. Background

This section provides background on the Commission's Negative Option Rule, its activities regarding the Rule, and ROSCA.

A. The Negative Option Rule

A ''negative option'' is any type of sales term or condition that allows a seller to interpret the customer's silence, or failure to take an affirmative action, as acceptance of an offer. The Rule regulates a specific type of negative option, the prenotification negative option plan for the sale of goods. In prenotification plans, consumers receive periodic announcements of upcoming merchandise shipments and have a set period to decline the shipment. Otherwise, the company sends them the merchandise. The periodic announcements and shipments can continue for an indefinite duration.

The Commission first promulgated the Rule (then titled the ''Negative Option Rule'') in 1973 under the FTC Act, 15 U.S.C. 41 *et seq.,* after finding that prenotification negative option marketers had committed unfair and deceptive marketing practices violative of Section 5 of the Act, 15 U.S.C. 45. The Rule became effective on June 4, 1974.

For prenotification plans, the Rule requires sellers to clearly and conspicuously disclose the plan's material terms before consumers subscribe.[5] In addition, the Rule requires sellers to follow certain procedures, including: abiding by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send; giving consumers a specified time period to respond to announcements; providing instructions for rejecting merchandise in announcements; and promptly honoring written requests to cancel from consumers who have met any minimum purchase requirements.[6]

The Rule does not cover continuity plans or automatic renewals, and only covers trial conversions to the extent that they also qualify as prenotification plans. In continuity plans, consumers receive regular merchandise shipments or access to services until they cancel the agreement. In trial conversions, consumers receive products or services for a trial period at no charge or for a reduced price. If the consumers do not cancel before the end of the trial period, the product shipments or provision of services continue and consumers incur charges. In automatic renewals, a magazine seller, for example, may automatically renew consumers' subscriptions when they expire, unless consumers cancel their subscriptions.

B. Commission Activity Relating to Regulation of Negative Options

In January 2007, the Commission hosted a workshop to analyze the marketing of goods and services through negative option offers.[7] The workshop featured consumer representatives, academics, and industry leaders who discussed the pros and cons of negative option offers and explored ways to make effective disclosures on the Internet.

Based on the workshop, in January 2009, the Commission issued a staff report.[8] Among other things, the report set forth five principles to guide industry in complying with Section 5 of the Federal Trade Commission Act (''FTC Act'') [9] when making online negative option offers. They address: (1) The disclosure of material terms; (2) the appearance of disclosures; (3) the timing of disclosures; (4) obtaining consumers' affirmative consent; and (5) cancellation procedures.

In May 2009, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the Rule as part of the Commission's ongoing comprehensive regulatory review program.[10] The ANPR sought comment on the Rule's overall costs, benefits, necessity, and regulatory and economic impact. The ANPR also asked for comment on whether the Commission should expand the Rule to cover other types of negative option offers.[11]

C. ROSCA

After the Commission's second comment period closed, Congress enacted ROSCA in December 2010 to address ongoing problems with online negative option marketing. This statute prohibits any person from charging or attempting to charge any consumer for goods or services sold in an Internet transaction through any negative option feature,[12] including trial conversions, continuity plans, and automatic renewals, unless the person: (1) Provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information; (2) obtains a consumer's express informed

in response to public input, changes in the marketplace, and resource demands. For more information, see *www.ftc.gov/opa/2011/07/regreview.shtm.*

[2] Public Law 111–345 (Dec. 29, 2010).

[3] *Federal Trade Commission: Telemarketing Sales Rule; Notice of Proposed Rulemaking,* 78 FR 41200 (July 9, 2013).

[4] *E.g.,* it may take time for firms to adjust to ROSCA's requirements and find a way to operate profitably, and for consumer complaints or reports regarding ROSCA violations to reach the Commission.

[5] The Rule enumerates seven material terms that sellers must disclose clearly and conspicuously. These terms are: the aspect of the plan under which subscribers must notify the seller if they do not wish to purchase the selection; any minimum purchase obligations; the subscribers' right to cancel; whether billing charges include postage and handling; that subscribers have at least ten days to reject a selection; that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and the frequency with which announcements and forms will be sent, and the maximum number subscribers should expect to receive during a twelve month period. 16 CFR 425.1(a)(1)(i)–(vii).

[6] 16 CFR 425.1(a)(2) and (3); 425.1(b).

[7] For materials and the agenda for the workshop, see *http://www.ftc.gov/bcp/workshops/negativeoption/index.shtml.*

[8] For the report, see *http://www.ftc.gov/os/2009/02/P064202negativeoptionreport.pdf.*

[9] 15 U.S.C. 45.

[10] *Federal Trade Commission: Rule Concerning the Use of Prenotification Negative Option Plans: Advance Notice of Proposed Rulemaking; Request for Comments,* 74 FR 22720 (May 14, 2009).

[11] At the request of several commenters, in August 2009 the Commission reopened the comment period for sixty days until October 13, 2009. *Federal Trade Commission: Rule Concerning the Use of Prenotification Negative Option Plan; Re-opening the record for submission of public comments,* 74 FR 40121 (Aug. 11, 2009).

[12] ROSCA incorporates the definition of ''negative option feature'' from the Commission's Telemarketing Sales Rule, 16 CFR 310.2(u).

consent before charging the consumer's account; and (3) provides simple mechanisms for a consumer to stop recurring charges.[13]

Another ROSCA provision addresses offers made by, or on behalf of, a third-party seller during, or immediately following, a transaction with an initial merchant.[14] In connection with these transactions, ROSCA prohibits post-transaction third party sellers from charging or attempting to charge any consumer's financial account unless (1) before obtaining billing information, the seller clearly and conspicuously discloses the material terms of the offer; and (2) the seller receives the consumer's express informed consent by (A) obtaining from the consumer the full account number of the account to be charged and the consumer's name and address and a means to contact the consumer; and (B) requiring the consumer to perform an additional affirmative action indicating consent.[15] The Act also prohibits initial merchants from disclosing billing information to any post-transaction third party seller for use in any Internet-based sale of goods or services.[16]

ROSCA provides that a violation of the Act shall be treated as a violation of a Commission trade regulation rule under Section 18 of the FTC Act.[17] Thus, the Commission may seek a wide variety of remedies for violations of ROSCA, including civil penalties under Section 5(m)(1)(A) of the FTC Act;[18] injunctive and equitable monetary relief under Section 13(b) of the Act;[19] and consumer redress, damages, and other relief under Section 19 of the Act.[20] States can enforce ROSCA as well.[21]

Although Congress charged the Commission with enforcing ROSCA, it did not provide rulemaking authority under the Administrative Procedure Act.[22] Hence, the Commission would have to rely on its existing authority under Section 18 of the FTC Act to amend the Negative Option Rule. As the Commission has noted, ''the current rulemaking procedures prescribed by Section 18 (often referred to as 'Magnuson-Moss' rulemaking) are complex, cumbersome, and time-consuming, resulting in rulemaking proceedings lasting many years.'' [23]

III. Regulatory Review Comments and Analysis

The Commission received 14 comments in response to the ANPR during the initial comment period and an additional 99 after the Commission reopened the comment period.[24] Most were filed by individuals and firms, but the Commission also received comments from state and local law enforcement agencies as well as trade associations. Specifically, the Commission received comments from the Attorneys General of Colorado, Florida, Pennsylvania, Washington, and Vermont (Vermont also filed on behalf of 18 other states [25]); as well as the Permitting, Licensing, and Consumer Protection Division of Broward County, Florida (''Broward County''). The Commission also received comments from the American Association of Law Libraries (''AALL''),[26] Direct Marketing Association (''DMA''),[27] Electronic Retailing Association (''ERA''),[28] Promotion Marketing Association (''PMA''),[29] and Magazine Publishers of America (''MPA'').[30] Commenters agreed that the Commission should retain the current Rule, but differed on whether it should expand the Rule's scope. Notwithstanding the evidence provided by law enforcement agencies, the Commission declines to expand the Rule because the intervening passage of ROSCA may sufficiently address the unfair and deceptive negative option practices described in the comments. Law enforcement agencies and one trade association supported expansion to cover other types of negative option features, presenting evidence of significant abuses that the Rule does not cover. Conversely, most trade associations argued against expansion, asserting that laws and guidance currently in place sufficiently protect consumers. To the extent ROSCA does not cover unfair and deceptive negative option marketing practices, the Commission can and will continue to address such practices using its other enforcement tools. In addition, the Commission will continue to look at negative option practices as the effects of ROSCA become clear.[31]

A. Support for Retaining the Rule

All the commenters addressing the issue supported the Rule's current provisions. Indeed, none of the commenters advocated repealing the Rule or narrowing its scope. For example, Broward County stated that the Rule protects consumers by requiring disclosures that make them aware of their financial obligations and imposes only nominal costs.[32] The trade associations concurred. For example, DMA ''believes that the current Negative Option Rule and the broader regulatory framework are working effectively, and strike the right balance between consumer protection and commerce.'' [33] Similarly, ERA ''strongly believes that the current regulatory structure for offers with an advance consent feature adequately balances the concerns of businesses, federal and state regulators, and consumers.'' [34]

In light of these comments, the Commission concludes that a continuing need exists for the Rule, and that costs imposed on businesses are reasonable.

B. Proposals To Expand the Rule

The comments diverged sharply, however, on whether to expand the

[13] 15 U.S.C. 8403.

[14] ROSCA defines ''post-transaction third party seller'' as a person other than the initial merchant who sells any good or service on the Internet and solicits the purchase on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. 15 U.S.C. 8402(d)(2).

[15] 15 U.S.C. 8402(a).

[16] 15 U.S.C. 8402(b).

[17] 15 U.S.C. 8404. Section 18 of the FTC Act is 15 U.S.C. 57a.

[18] 15 U.S.C. 45(m)(1)(A).

[19] 15 U.S.C. 53(b).

[20] 15 U.S.C. 57b(a)(1) and (b).

[21] 15 U.S.C. 8405.

[22] 5 U.S.C. 552 *et seq.*

[23] *See Prepared Statement of the Federal Trade Commission on Financial Services and Products: The Role of the Federal Trade Commission in Protecting Consumers,* Before the Senate Committee on Commerce, Science, and Transportation (Feb. 4, 2010), *available at http://www.ftc.gov/os/testimony/P064814financial-services.pdf.*

[24] The comments are available on the Commission's Web site at *http://www.ftc.gov/os/comments/prenotnegativeoprule/index.shtm* and *http://www.ftc.gov/os/comments/negoprulereopen/index.shtm.*

[25] Vermont filed on behalf of Arkansas, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Ohio, Oregon, Tennessee, and West Virginia. Vermont, 543809–00098. Later Connecticut, Delaware, Louisiana, Mississippi, and New Jersey joined Vermont's comment. Vermont, 543809–00105.

[26] AALL is a non-profit organization with nearly 5,000 members. AALL, 543809–00102, at 1.

[27] DMA represents more than 3,500 companies, including a majority of the Fortune 100 companies. DMA, 541909–00011, at 2.

[28] ERA is the leading trade association representing the electronic retailing industry. ERA, 541909–00010, at 2.

[29] PMA is a not-for-profit organization and resource for research, education, and collaboration for marketing professionals. PMA, 543809–00097, at 1.

[30] MPA represents hundreds of domestic publishing companies, international publishers, and associate members that publish over a 1,000 different titles. MPA, 541909–00008, at 1.

[31] The Commission notes that 46 states and the District of Columbia recently announced a $30 million settlement resolving allegations that Affinion Group, Inc., Trilegiant Corp., and Webloyalty.com engaged in deceptive negative option marketing practices. *See http://www.illinoisattorneygeneral.gov/pressroom/2013_10/20131010.html.* The defendants are required to comply with ROSCA. *See https://www.oag.state.tx.us/newspubs/releases/2013/AFJPI12.PDF.*

[32] Broward County comment, 543809–00007, at 1 and 6.

[33] DMA, 541909–00011, at 3.

[34] ERA, 541909–00010, at 4.

Rule. All of the state and local law enforcement agencies as well as AALL advocated expanding the Rule, while the rest of the trade associations opposed expansion as explained in section III.C below.[35]

1. State and Local Law Enforcement

The state law enforcement agencies urged the Commission to expand the Rule to cover additional types of negative options, particularly trial conversion offers. They also favored covering the marketing of services and not just merchandise.

Mainly to expand the Rule to address all types of negative option marketing, each of these agencies also proposed adding a variety of new requirements and prohibitions, most of which would help ensure that sellers (1) disclose materials terms clearly and conspicuously;[36] (2) obtain informed, affirmative consent before charging or continuing to charge consumers;[37] or (3) maintain practices and procedures facilitating easy cancellation so that consumers can avoid charges for unwanted merchandise or services.[38] The specific proposals of the agencies vary, but with a few exceptions[39] fall into the three categories above. In addition, several individual comments advocated for similar proposals, such as expanding the Rule to cover other types of negative options and adding disclosure and notice requirements.[40]

In support of their proposals, the agencies cited thousands of consumer complaints regarding negative options,[41] their own experience,[42] and consumer survey evidence[43] showing that many consumers are not aware of their enrollment in negative option plans. According to the agencies, consumers experience problems, including inadequate disclosures, the imposition of charges without the consumers' informed consent, difficult cancellation procedures, failure to honor cancellation requests, and trial offers where consumers forget they have consented to future charges.[44] The agencies argued that this evidence demonstrates a need for an expanded Rule to better protect consumers.

In addition, many agencies noted the increasing frequency of Internet negative option marketing. For example, Florida provided information about 47 negative option investigations from 1997 to 2009. Most of these involved Internet negative option marketing, including 18 that involved solely Internet marketing. In addition, 25 of the 28 investigations since 2005 involved Internet marketing. Sixteen of the 25 involved solely Internet marketing.[45] Washington noted that sellers frequently make free-to-pay offers on the Internet, and that previously such offers were made most frequently in telemarketing and direct mail.[46] Similarly, Broward County stated that most free trial conversion negative option sales transactions occur on the Internet.[47]

2. AALL Proposals

AALL advocated expanding the scope of the Rule in several respects and adding a number of prohibitions and requirements, many of which resemble the proposals described above. Like the law enforcement agencies, it supported expanding the Rule to cover other types of negative option offers. It also advocated expanding the Rule to protect institutional consumers, such as law libraries, as well as individuals, and to

[35] Pennsylvania filed a one page comment indicating that the Commission should extend the Rule to cover additional types of negative option offers. Pennsylvania, 541909–00012.

[36] Florida, 543809–00099, at 10; and Washington, 541909–00009, at 1. Broward County proposed defining ''clearly and conspicuously'' and requiring a standardized format for disclosing the terms of negative option offers and obtaining billing information from consumers on the Internet. Broward County, 543809–00007, at 7–9.

[37] Vermont and the 18 states joining its comment favored (1) prohibiting charges following a ''free'' trial without receiving the consumer's affirmative consent at the end of the trial; (2) mandating periodic notification of charges in trial conversions; and (3) limiting to 18 months the duration of the time period a consumer may be charged, and requiring an affirmative ''opt in'' to exceed that time limit. Vermont, 543809–00098, at 7–8. Colorado favored (1) and (2) above. Colorado, 543809–00096, at 7. Florida favored requiring sellers to obtain consent at the end of the free trial and before imposing any renewal charges on a recurring term subscription. Florida, 543809–00099, at 8–9. Washington proposed requiring sellers to (1) obtain billing information directly from consumers during the transaction; (2) obtain verifiable authorization from the consumer to be billed; and (3) obtain acceptance through an affirmative act by the consumer. Washington also proposed limiting the number of months a seller can charge a consumer before obtaining new authorization to continue imposing charges. Washington suggested a limit of 18 months. Washington, 541909–00009, at 7–8. Florida favored requiring express, informed consent of the offer, and tightening requirements for third-party billing mechanisms. Florida, 543809–00099, at 1–2 and 7–9. It also favored requiring disclosure in confirmation notices following the sale at no less than six month intervals. Florida, 543809–00099, at 10.

[38] Colorado, Vermont and the 18 states joining Vermont's comment supported requiring sellers to permit consumers to cancel in the same method of communication as the solicitation to the consumer. Colorado, 543809–00096, at 7; Vermont, 543809–00098, at 8. Florida favored this too, and argued that cancellation should be acknowledged with a cancellation number. Florida also supported disclosing the requirements for cancellation in written confirmation of the offer and periodic disclosures, and providing sufficient time to cancel after the consumer receives acknowledgment of the offer and accepts the charges. Florida, 543809–00099, at 9–11. Washington proposed requiring sellers to: (1) Identify themselves on billing statements; and (2) provide for easy cancellation—at a minimum by allowing consumers to cancel using the same means they used to accept the offer. Washington, 541909–00009, at 8.

[39] Broward County proposed some requirements beyond those categories for trial periods: Requiring trial periods to start on the date the consumer receives the product and prohibiting sellers from billing consumers prior to the expiration of the trial period. Broward County, 543809–00007, at 12. In addition, Florida proposed prohibiting the marketing of negative option contracts to minors. Florida, 543809–00099, at 11.

[40] *See, e.g.,* comments 541909–00001, 541909–00007, and 543809–00004. A total of 98 individuals submitted comments. Most did not comment on any specific Rule provisions. Instead, these comments generally either complained about the practices of a particular firm or urged greater regulation of negative option offers. Some proposed changes that the Commission lacks authority to adopt, such as requiring licenses to make negative option offers (*e.g.,* comment 541909–00003). A few individual and business comments urged the Commission not to expand the Rule (*e.g.,* comments 543809–00101 and 541909–00014).

[41] The agencies reported receiving thousands of complaints. For example, Florida reported over 2,000 complaints in four of its pending negative option investigations alone. Florida, 543809–00099, at 2.

[42] The agencies reported that they have investigated or taken enforcement action against sellers engaged in negative option marketing. For example, Florida reported handling nearly 50 investigations involving negative option marketing since 1998, the overwhelming majority of which involve free-to-pay conversions with automatic renewal or continuity features. Florida, 543809–00099, at 2 and Appendix A.

[43] Several states reported survey results underscoring that many consumers incur charges for memberships in negative option plans of which they are unaware and do not want. In May 2006, the Iowa Attorney General announced the results of a survey of consumers enrolled in negative option plans run by Memberworks, Inc., now known as Vertrue, Inc. Vermont, 543809–00098, at 6; Colorado, 543809–00096, at 5–6. Four hundred surveys were mailed to consumers. Of the 88 consumers who responded, 67% were unaware of their membership in the negative option plan. Almost all of the remaining consumers had never used the plan, or believed they had cancelled their membership. None expressed satisfaction with the membership. In 2007, Vermont surveyed state residents who had been billed for discount plan memberships involving a trial conversion negative option. Vermont, 543809–00098, at 6; Colorado, 543809–00096, at 6. Of the 100 respondents, 67 did not recall signing up for the plan and 53 answered expressly that they did not agree to be billed. Only six responded that they had ever used the plan. *Id.*

[44] Colorado, Vermont, and the 18 states joining Vermont's comment contended that the problem with trial conversions stems less from the failure to make up-front disclosures and obtain consent than from the fact that consumers enticed by a free trial offer are unlikely to remember their spur-of-the-moment assent to periodic charges and therefore unlikely to scrutinize their accounts for unwanted charges. Colorado, 543809–00096, at 6; Vermont, 543809–00098, at 7. Florida agreed that free trial offers can lure consumers into a state of forgetfulness. Florida, 543809–00099, at 9.

[45] Florida, 543809–00099, at Appendix A. Florida reported that this appendix is not an exhaustive list of its negative option investigations. For example, it does not include non-public investigations. *Id.* at 2.

[46] Washington, 541909–00009, at 5.

[47] Broward County, 543809–00007, at 13.

cover online subscriptions and digital materials, such as e-books, podcasts, and applications.

AALL favored adding some of the same prohibitions and requirements favored by the state and local law enforcement agencies as well as a host of others to address negative option marketing by firms selling legal publications. For example, AALL urged the Commission to impose a maximum duration of no more than five years on negative option plans.[48] It also proposed a number of provisions to address the shipment of unordered publications and facilitate cancellation of unwanted negative option plans.[49]

In support of its numerous proposals, AALL cited the experience of its members who have received unordered and unwanted legal publications. It also cited two Florida law enforcement actions involving negative option marketing practices affecting libraries.

C. Opposition To Expanding the Rule

Unlike AALL, the other four trade associations opposed any expansion. All argued that existing Commission authority and guidance, along with industry guidance, protect consumers adequately. They also argued that prescriptive regulation would harm consumers.

DMA urged the Commission ''to avoid unnecessary regulation that would limit consumers' ability to learn about valuable goods and services, hinder innovation, or inhibit commerce, especially during these challenging economic times.'' [50] It stated that robust industry self-regulation, coupled with existing FTC enforcement authority, effectively meets the needs of both consumers and businesses in this area. DMA also explained that its members are required to comply with Article 12 of its *Guidelines for Ethical Business Practice,* which addresses negative option marketing in detail. Non-complying members that fail to come into compliance face expulsion and may be reported to government regulators.[51]

Similarly, ERA and PMA contended that (1) the Commission already possesses the enforcement tools necessary to protect consumers, including Section 5 of the FTC Act, the Postal Reorganization Act of 1970 (''PRA''),[52] the Electronic Fund Transfer Act (''EFTA''),[53] the Negative Option Rule, and the TSR; (2) guidance documents published by the Commission provide adequate concrete guidance and direction to the industry; (3) the Commission should avoid a prescriptive approach that will deprive marketers of the flexibility to adapt to the rapidly evolving marketplace; and (4) the record does not indicate that deception results from advertising that complies with the above laws and guidance.[54] They also noted the existence of various industry self-regulatory programs that help prevent deception.[55] ERA pointed to its Advance Consent Guidelines, which cover the full range of negative option programs currently offered in the marketplace, including free trial offers, continuity plans, and automatic renewals.[56]

Finally, MPA argued that the Commission's current guidance and enforcement ability sufficiently protect consumers.[57] Like DMA and ERA, MPA has developed guidance for its members on negative option marketing.[58] It too touted the benefits of negative option plans and the need for flexibility in responding to a rapidly changing marketplace.

D. Analysis

The comments advocating expansion of the Rule argue convincingly that unfair, deceptive, and otherwise problematic negative option marketing practices continue to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies. Indeed, negative option arrangements not covered by the Rule, such as trial conversions and continuity plans, have accounted for most of the Commission's recent enforcement activity in this area.[59] The record also indicates that Internet marketing represents a large and growing share of negative option marketing, particularly that involving free trial conversions.[60]

Congress reached the same conclusion and, as a result, enacted ROSCA to protect consumers from deceptive online negative option practices. The additional enforcement tools provided by ROSCA likely will assist the Commission in stopping unlawful negative option practices in the significant and growing slice of the market involving the Internet. Due to the availability of these promising new tools and uncertainty regarding how ROSCA will affect the marketplace, the Commission declines to propose amendments to the Negative Option Rule at this time.

ROSCA addresses many of the concerns raised in the comments by requiring Internet sellers of any negative option type, including trial conversions, to disclose material terms, obtain informed consent, and provide simple mechanisms for consumers to stop recurring charges.[61] ROSCA also provides the Commission with civil penalty authority, thereby bolstering the Commission's enforcement tools in this area.[62]

Furthermore, ROSCA provides additional protections for consumers who receive an offer from a third-party seller immediately after making an Internet purchase. Specifically, it requires that third-party sellers provide adequate disclosures and obtain affirmative consent and billing information directly from the consumer before imposing charges rather than charging the consumer using billing

[48] AALL, 543809–00102, at 5.

[49] For example, AALL proposed that the Commission prohibit sellers from: (1) Sending unordered books unless they are clearly marked as such; (2) sending invoices or dunning notices for unordered books; and (3) commanding payment for or the return of unordered books. These practices violate the Postal Reorganization Act of 1970, 39 U.S.C. 3009. AALL, 543809–00102, at 4.

[50] DMA, 541909–00011, at 1.

[51] *Id.* at 4–5.

[52] 39 U.S.C. 3009.

[53] 15 U.S.C. 1693–1693r.

[54] ERA, 541909–00010, at 3–4; PMA, 543809–00097, at 3.

[55] PMA, 543809–0097, at 10.

[56] ERA, 541909–00010, at 13–14.

[57] MPA, 541909–00008, at 1.

[58] *Id.* at 5–6.

[59] Over the last few years, the Commission has filed a number of law enforcement actions challenging negative option marketing practices, including, for example, *FTC* v. *Process America, Inc.,* No. 14–0386–PSG–VBKx (C.D. Cal. Jan. 16, 2014) (processing of unauthorized charges relating to negative option marketing), *http://www.ftc.gov/news-events/press-releases/2013/11/ftc-settlements-crack-down-payment-processing-operation-enabled; FTC* v. *Willms,* No 2:11–cv–00828 (W.D. Wash. May 16, 2011) (Internet free trials and continuity plans), *http://www.ftc.gov/opa/2011/05/jessewillms.shtm; FTC* v. *Moneymaker,* No. 2:11–cv–00461–JCM–RJJ (D. Nev. Mar. 28, 2011) (Internet trial offers and continuity programs), *http://www.ftc.gov/opa/2011/04/moneymaker.shtm; FTC* v. *Johnson,* No. 2:10–cv–02203–RLH–GWF (D. Nev. Dec. 21, 2010), (Internet trial offers), *http://www.ftc.gov/opa/2010/12/iworks.shtm;* and *FTC* v. *John Beck Amazing Profits, LLC,* No. 2:09–cv–04719 (C.D. Cal. June 30, 2009) (infomercial and telemarketing trial offers and continuity programs), *http://www.ftc.gov/opa/2009/07/shortchange.shtm; see also* ''An Overview of the FTC's Enforcement Actions Concerning Negative Option Marketing,'' a presentation delivered during the Commission's 2007 ''Negative Options: An FTC Workshop Analyzing Negative Option Marketing,'' *available at www.ftc.gov/bcp/workshops/negativeoption/presentations/Ashe.pdf.*

[60] *See* discussion in section III.B.1 above.

[61] ROSCA also furthers the principles to guide negative option marketers set forth in the Commission's 2009 report on its negative option workshop, including adequate disclosures, informed consent, and reasonable cancellation procedures.

[62] Civil penalty authority is particularly useful in cases where it is difficult to calculate consumer injury, administer a redress program, or prove that the violator made substantial gains from its unlawful conduct.

information obtained from the initial seller.[63]

The Commission recognizes that ROSCA does not apply to negative option marketing in media other than the Internet. However, as noted above, the record indicates that Internet marketing represents a large and growing share of negative option marketing. Accordingly, the Commission can and will continue to challenge deceptive or unfair negative option practices as needed under the Negative Option Rule, Section 5 of the FTC Act, the TSR, EFTA,[64] and the PRA,[65] and will consider whether changes in the marketplace warrant reevaluation of the Commission's rules as they apply to negative option marketing in specific contexts.

The TSR, like ROSCA, addresses many of the negative option abuses identified by the comments. For example, the Commission previously addressed trial conversions and other negative option marketing in the context of outbound telemarketing by amending the TSR in 2003.[66] In addition, the Commission recently proposed amending the TSR to prohibit the use of payment methods often used in deceptive marketing, including of negative options, such as unsigned checks and remotely created ''payment orders.'' [67] Furthermore, in May 2013, the Commission announced that it plans to initiate a regulatory review of the TSR.[68] Commenters in that review can raise issues related to negative option marketing.

If the Commission concludes that ROSCA and its other enforcement tools do not provide adequate protection for consumers, it can then consider, based on a more complete record, whether and how to amend the Rule. The Commission can also consider whether to recommend that Congress amend ROSCA or take some other action.[69]

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–17978 Filed 7–30–14; 8:45 am]

BILLING CODE 6750–01–P

[63] This provision applies to all Internet marketing, including negative option marketing.

[64] Among other things, EFTA prohibits imposing recurring charges on a consumer's bank account without written authorization. EFTA provides that the Commission shall enforce its requirements, except to the extent that enforcement is specifically committed to some other Government agency, and that a violation of any of its requirements shall be deemed a violation of the FTC Act. Accordingly, the Commission has authority to seek the same injunctive and monetary equitable relief for EFTA violations that it can seek for other Section 5 violations.

[65] The PRA provides that mailing unordered merchandise, or a bill or dunning communications for such merchandise, constitutes an unfair method of competition and an unfair trade practice in violation of Section 5 of the FTC Act. Accordingly, the Commission has authority to seek the same remedies for PRA violations that it can seek for other Section 5 violations. For example, the Commission can seek civil penalties pursuant to Section 5(m)(1)(B) of the FTC Act from violators who have actual knowledge that the Commission has found mailing unordered merchandise unfair.

[66] *See Federal Trade Commission: Telemarketing Sales Rule; Final Amended Rule,* 68 FR 4580, 4594–97 (Jan. 29, 2003) (codified at 16 CFR 310.2(p), 310.2(u), 310.3(a)(1)(vii), and 310.6(b)(4)–(6)) (telemarketers must disclose all material terms and conditions of negative option offers, including ''free-to-pay conversion'' offers, in outbound telemarketing calls and upsells).

[67] *Federal Trade Commission: Telemarketing Sales Rule; Notice of Proposed Rulemaking,* 78 FR 41200 (July 9, 2013). The TSR Notice of Proposed Rulemaking noted negative option cases where the defendants used unauthorized remotely created checks. *E.g., FTC v. FTN Promotions, Inc.,* Civ. No. 8:07–1279 (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.) (defendants allegedly caused more than $171 million in unauthorized charges to consumers accounts for bogus travel and buyers' clubs in part by using unauthorized remotely created checks).

[68] *Federal Trade Commission: Notice of Intent to Request Public Comments,* 78 FR 30798 (May 23, 2013).

[69] For example, the Commission could seek authority to conduct a rulemaking using more expeditious procedures than those set forth in Section 18.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 405

[Docket No. SSA–2014–0034]

RIN 0960–AH67

Extension of Expiration Date for Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge; Correction

AGENCY: Social Security Administration.

ACTION: Correction amendment.

SUMMARY: The Social Security Administration published a final rule document in the **Federal Register** on July 18, 2014 (79 FR 41881), extending the expiration date for the Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge. That document inadvertently had a timing issue with § 405.315(e) not being codified by the July 18, 2014 publication. Section 405.315(e) was codified on July 25, 2014. This document corrects the final regulation by revising the now codified § 405.315(e).

DATES: Effective on July 31, 2014, and applicable beginning July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Brian J. Rudick, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: We published a final rule document in the **Federal Register** of July 18, 2014, (79 FR 41883) extending the expiration date for the Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge in our regulations. In this final rule, we inadvertently had a timing issue with section 405.315(e) not being codified by the July 18, 2014 publication. Section 405.315(e) was codified on July 25, 2014. This document corrects the final regulation by revising the now codified section 405.315(e).

List of Subjects in 20 CFR Part 405

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Public assistance programs, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI).

Accordingly, 20 CFR chapter III, part 405 is corrected by making the following correcting amendment:

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

Subpart D—[Amended]

■ 2. In § 405.315, revise the second sentence in paragraph (e) to read as follows:

§ 405.315 Time and place for a hearing before an administrative law judge.

* * * * *

(e) *Pilot program.* * * * These provisions will no longer be effective on August 10, 2015, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

Paul Kryglik,

Director, Office of Regulations and Reports Clearance.

[FR Doc. 2014–17976 Filed 7–30–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 529, and 558

[Docket No. FDA–2014–N–0002]

New Animal Drugs; Bacitracin Methylene Disalicylate; Dinoprost Solution; Gonadorelin Hydrochloride; Progesterone Intravaginal Inserts; Salinomycin; Ractopamine; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during June 2014. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to remove a cross-reference to a combination drug medicated feed that is no longer codified.

DATES: This rule is effective July 31, 2014.

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

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during June 2014 as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine (CVM) FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm*. Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/default.htm*.

Also, the regulations are being amended in 21 CFR 558.76 to remove a cross-reference to a combination drug medicated feed which was removed in earlier corrections to part 558 (79 FR 10976, February 27, 2014). This amendment is being made to improve the accuracy of the regulations.

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

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JUNE 2014

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Sections	FOIA Summary	NEPA Review
108–901	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LUTALYSE (dinoprost injection) Injection.	Supplemental approval of label references to approved uses with gonadorelin hydrochloride injection and progesterone intravaginal inserts.	522.690, 522.1077, 529.1940	yes	CE[1] [2]
128–686	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	BIO–COX 60 (salinomycin sodium) Type A medicated article.	Supplemental approval of revised assay limits for Type A medicated articles.	558.4	no	CE[1] [2]
200–473[3]	Huvepharma AD, 5th Floor, 3A, Nikolay Haytov Str., 1113 Sophia, Bulgaria.	TYLOVET (tylosin tartrate) Soluble.	Supplemental approval of a change in marketing status from over-the-counter (OTC) to by veterinary prescription (Rx).	520.2640	no	CE[1] [2]
200–560	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	ACTOGAIN (ractopamine HCl), RUMENSIN (monensin), MGA (melengestrol acetate), and Type B and C medicated feeds.	Original approval as a generic copy of NADA 141–234.	558.500	yes	CE[1] [2]
200–562	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	ACTOGAIN (ractopamine HCl), RUMENSIN (monensin), TYLAN (tylosin phosphate), and MGA (melengestrol acetate) Type B and C medicated feeds.	Original approval as a generic copy of NADA 141–233.	558.500	yes	CE[1] [2]

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

[2] CE granted under 21 CFR 25.33(a)(1).

[3] The application listed was identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209'', December 2013.

List of Subjects

21 CFR Parts 520, 522, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, 529, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.2640 [Amended]

■ 2. In § 520.2640, in paragraphs (b)(1) and (d) remove ''No. 000986'' and in its place add ''Nos. 000986 and 016592''; and in paragraph (b)(2) remove ''Nos. 016592 and 061623'' and in its place add ''No. 061623''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 4. In § 522.690, revise the section heading and paragraph (d)(2)(v) to read as follows:

§ 522.690 Dinoprost.

* * * * *

(d) * * *

(2) * * *

(v) Dinoprost injection as provided by No. 054771 in § 510.600(c) of this chapter may also be used concurrently with gonadorelin hydrochloride injection as in § 522.1077 and with progesterone intravaginal inserts as in § 529.1940 of this chapter.

* * * * *

■ 5. In § 522.1077, revise paragraph (c)(1)(ii) to read as follows:

§ 522.1077 Gonadorelin hydrochloride.

* * * * *

(c) * * *

(1) * * *

(ii) For use with dinoprost injection to synchronize estrous cycles to allow fixed-time artificial insemination (FTAI) in lactating dairy cows, administer to each cow 100 to 200 mcg gonadorelin by intramuscular injection, followed 6 to 8 days later by 25 mg dinoprost by intramuscular injection, followed 30 to 72 hours later by 100 to 200 mcg gonadorelin by intramuscular injection. Dinoprost injection as in § 522.690, provided by No. 054771 in § 510.600(c) of this chapter.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 7. In § 529.1940, revise paragraph (d), the second sentence in paragraph (e)(1)(i) and the last sentence in paragraph (e)(1)(iii) to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

* * * * *

(d) *Special considerations.* Product labeling shall bear the following warning: ''Avoid contact with skin by wearing protective gloves when handling inserts. Store removed inserts in a sealable container until they can be disposed of in accordance with applicable local, state, and Federal regulations.''

(e) * * *

(1) * * *

(i) * * * When used for indications listed in paragraph (e)(1)(ii)(A) of this section, administer 25 mg dinoprost as a single intramuscular injection 1 day prior to insert removal (Day 6). * * *

* * * * *

(iii) * * * Dinoprost injection for use in paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) of this section as in § 522.690 of this chapter, provided by No. 054771 in § 510.600(c) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 8. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

■ 9. In paragraph (d) of § 558.4, in the ''Category I'' table, in the ''Assay limits percent type A'' column, in the entry for ''Salinomycin'', remove ''95–115'' and in its place add ''90–110''.

§ 558.76 [Amended]

■ 10. In § 558.76, remove and reserve paragraph (d)(3)(vii).

§ 558.500 [Amended]

■ 11. In § 558.500, in the table in paragraphs (e)(2)(viii) and (e)(2)(x), in the ''Sponsor'' column, remove ''000986'' and in its place add ''000986, 054771''.

Dated: July 24, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–17912 Filed 7–30–14; 8:45 am]

BILLING CODE 4164–01–P

MILLENNIUM CHALLENGE CORPORATION

22 CFR Part 1305

[MCC FR 14–03]

Touhy Regulations

AGENCY: Millennium Challenge Corporation.

ACTION: Final rule.

SUMMARY: This rule implements the procedures by which the Millennium Challenge Corporation responds to subpoenas or other official demands for information and testimony served upon itself or its employees.

DATES: This rule is effective July 31, 2014.

FOR FURTHER INFORMATION CONTACT: John C. Mantini, Office of the General Counsel, Millennium Challenge Corporation, 202–521–3863, or *foia@mcc.gov.*

SUPPLEMENTARY INFORMATION: The United States Supreme Court held in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), that the head of a federal agency may make the determination on his/her sole authority to produce documents and authorize employee's testimony in response to a subpoena or other demand for information. This regulation governs the Millennium Challenge Corporation's procedures for authorizing or denying such demands. MCC published a proposed regulation on May 9, 2014 in 79 FR 26659 and invited interested parties to submit comments. MCC received no comments. Accordingly, the proposed regulation is adopted as a final regulation with only minor editorial changes.

List of Subjects in 22 CFR Part 1305:

Administrative Practice and procedure, Courts, Disclosure, Exemptions, Government employees, Subpoenas, Records, Testimony.

■ For the reasons set forth above, the Millennium Challenge Corporation amends Chapter XIII of 22 CFR by adding Part 1305, to read as follows:

PART 1305—RELEASE OF OFFICIAL INFORMATION AND TESTIMONY BY MCC PERSONNEL AS WITNESSES

Sec.
1305.1 Purpose and scope.
1305.2 Definitions.
1305.3 Production prohibited unless approved.
1305.4 Factors to be considered by the General Counsel.
1305.5 Service of demands.
1305.6 Processing demands.
1305.7 Final determination.
1305.8 Restrictions that apply to testimony.
1305.9 Restrictions that apply to released documents.
1305.10 Procedure when a decision is not made prior to the time a response is required.
1305.11 Procedure in the event of an adverse ruling.
1305.12 No private right of action.

Authority: 5 U.S.C. 301.

§ 1305.1 Purpose and scope.

Pursuant to 5 U.S.C. 301, the head of an executive department or military department may prescribe regulations for the government of his/her department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. Section 301 does not authorize withholding information from the public or limiting the availability of records to the public. This part contains the regulations of the Millennium Challenge Corporation (MCC) concerning procedures to be followed when a request, subpoena, order or other demand (hereinafter in this part referred to as a ''demand'') of a court or other authorities in any state or federal proceeding is issued for the production or disclosure of:

(a) Any material contained in the files of MCC;

(b) Any information relating to materials contained in the files of MCC; or

(c) Any information or material acquired by an employee of MCC during the performance of the employee's official duties or because of the employee's official status.

§ 1305.2 Definitions.

For purposes of this part:

(a) *Demand* means a request, order, or subpoena for testimony or documents related to or for possible use in a legal proceeding.

(b) *Document* means any record or other property, no matter what media and including copies thereof, held by MCC, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(c) *Employee* means all employees and officers of MCC, including contractors who have been appointed by, or are subject to the supervision, jurisdiction or control of MCC. The procedures established within this part also apply to former employees and contractors of MCC.

(d) *General Counsel* means the General Counsel or MCC employee to whom the General Counsel has delegated authority to act under this subpart.

§ 1305.3 Production prohibited unless approved.

No employee or former employee shall, in response to a demand of a court or other authority, disclose any information relating to materials contained in the files of MCC, or disclose any information or produce any material acquired as part of the performance of the person's official duties, or because of the person's official status, without the prior, written approval of the General Counsel.

§ 1305.4 Factors to be considered by the General Counsel.

(a) In deciding whether to authorize the release of official information or the testimony of employees concerning official information, the General Counsel shall consider the following factors:

(1) Whether the demand is unduly burdensome;

(2) MCC's ability to maintain impartiality in conducting its business;

(3) Whether the time and money of the United States would be used for private purposes;

(4) The extent to which the time of employees for conducting official business would be compromised;

(5) Whether the public might misconstrue variances between personal opinions of employees and MCC policy;

(6) Whether the demand demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in its scope;

(7) Whether the number of similar demands would have a cumulative effect on the expenditure of agency resources;

(8) Whether disclosure otherwise would be inappropriate under the circumstances; and

(9) Any other factor that is appropriate.

(b) Among those demands in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exists:

(1) The disclosure would violate a statute, Executive order, or regulation;

(2) The integrity of the administrative and deliberative processes of MCC would be compromised;

(3) The disclosure would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(4) The disclosure, including release in camera, is not appropriate or necessary under the relevant substantive law concerning privilege;

(5) The disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(6) The disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

§ 1305.5 Service of demands.

Demands for official documents, information or testimony must be in writing, and served on the General Counsel, Millennium Challenge Corporation, 875 Fifteenth Street NW., Washington, DC 20005–2221.

§ 1305.6 Processing demands.

(a) After service of a demand to produce or disclose official documents and information, the General Counsel will review the demand and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official documents.

(b) If information or material is sought by a demand in any case or matter in which MCC is not a party, an affidavit or, if that is not feasible, a statement by the party seeking the information or material, or by his/her attorney setting forth a summary of the information or material sought and its relevance to the proceeding, must be submitted before a decision is made as to whether materials will be produced or permission to testify or otherwise provide information will be granted. Any authorization for testimony by a present or former employee of MCC shall be limited to the scope of the demand.

(c) When necessary, the General Counsel will coordinate with the Department of Justice to file appropriate

motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(d) If a demand fails to follow the requirements of these regulations, MCC will not allow the testimony or produce the documents.

(e) MCC will process demands in the order in which they are received. Absent unusual circumstances, MCC will respond within 45 days of the date that the demand was received. The time for response will depend upon the scope of the demand.

(f) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of MCC or the United States or for other good cause.

§ 1305.7 Final determination.

The General Counsel makes the final determination on demands to employees for production of official documents and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the Court or other authority of the final determination, the reasons for the grant or denial of the demand, and any conditions that the General Counsel may impose on the release of documents, or on the testimony of an employee. When in doubt about the propriety of granting or denying a demand for testimony or documents, the General Counsel should consult with the Department of Justice.

§ 1305.8 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of MCC employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) MCC may offer the employee's declaration in lieu of testimony, in whatever form the court finds acceptable.

(c) If authorized to testify pursuant to this part, an employee may testify to relevant unclassified materials or information within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current MCC employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of MCC, unless testimony is being given on behalf of the United States.

§ 1305.9 Restrictions that apply to released documents.

(a) The General Counsel may impose conditions or restrictions on the release of official documents and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of the confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, MCC may condition the release of official documents and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original MCC documents may be presented in response to a demand, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official MCC documents nor are they to be marked or altered. In lieu of original records, certified copies will be presented for evidentiary purposes. (See 28 U.S.C. 1733).

§ 1305.10 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand is required before the General Counsel can make the determination referred to above, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand is being reviewed, and respectfully seek a stay of the demand pending a final determination.

§ 1305.11 Procedure in the event of an adverse ruling.

If the court or other competent authority declines to stay the demand in response to a request made in accordance with § 1305.10, or if the court or other competent authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951)).

§ 1305.12 No private right of action.

This part is intended only to provide guidance for the internal operations of MCC, and is not intended to, and does not, and may not be relied upon, to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

Dated: July 11, 2014.

John Mantini,

Assistant General Counsel, Millennium Challenge Corporation.

[FR Doc. 2014–16757 Filed 7–30–14; 8:45 am]

BILLING CODE 9211–03–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9685]

RIN 1545–BM18

Segregation Rule Effective Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations under section 382 of the Internal Revenue Code (Code) that modify the effective date provision of recently published regulations. These regulations affect corporations whose stock is or was acquired by the Department of the Treasury (Treasury) pursuant to certain programs under the Emergency Economic Stabilization Act of 2008 (EESA). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. This document also modifies the existing regulations to provide a cross-reference to this temporary regulation.

DATES: *Effective Date:* These regulations are effective on July 31, 2014.

Applicability Date: For dates of applicability, see section 1.382–3T(j)(17).

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 317–5353 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 382

Section 382 of the Code provides that the taxable income of a loss corporation for a year following an ownership change may be offset by pre-change losses only to the extent of the section 382 limitation for such year. An ownership change occurs with respect to a corporation if it is a loss corporation on a testing date and, immediately after the close of the testing date, the percentage of stock of the corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of such corporation owned by such shareholders at any time during the testing period.

Pursuant to section 382(g)(4)(A), shareholders who own less than five percent of a loss corporation are aggregated and treated as a single 5-percent shareholder (a public group). In addition, new public groups may be created as a result of certain transactions under the segregation rules in the section 382 regulations. Any new public group is tracked separately from, and in addition to, the public group or groups that existed previously and is treated as a new 5-percent shareholder that increases its ownership interest in the loss corporation.

One particular segregation rule, which was imposed by § 1.382–2T(j)(3)(i) of the Temporary Income Tax Regulations until it was superseded, required segregation when an individual or entity that owned five percent or more of the loss corporation transferred an interest in the loss corporation to public shareholders. After the sale, stock owned by a public group that existed immediately before the sale was treated separately from the stock owned by the public group that acquired stock from the seller. This separate public group was treated as a new 5-percent shareholder. However, this rule was rendered inoperative by § 1.382–3(j)(13), part of a set of regulations published in TD 9638 [78 FR 62418] on October 22, 2013. Under the new regulation, no new public group is created on the transfer of stock to the public shareholders; instead, the transferred stock is treated as acquired proportionately by the public groups existing at the time of the transfer.

Notice 2010–2 (2010–2 IRB 251 (December 16, 2009)) (see § 1.601.601(d)(2)(ii)(B) of this chapter), provides guidance regarding the application of section 382 of the Code and other provisions of law to corporations whose instruments are acquired and disposed of by the Treasury pursuant to EESA. Notice 2010–2 relates to instruments acquired by Treasury pursuant to the following EESA programs: (i) The Capital Purchase Program for publicly-traded issuers; (ii) the Capital Purchase Program for private issuers; (iii) the Capital Purchase Program for S corporations; (iv) the Targeted Investment Program; (v) the Asset Guarantee Program; (vi) the Systemically Significant Failing Institutions Program; (vii) the Automotive Industry Financing Program; and (viii) the Capital Assistance Program for publicly-traded issuers. (These programs are collectively referred to as ''Programs'' in that Notice and in this preamble.)

Under Section III(G) of Notice 2010–2, a ''Covered Instrument'' is an instrument that is acquired by Treasury in exchange for an instrument that was issued to Treasury under the Programs, or is acquired by Treasury in exchange for another Covered Instrument. For most purposes of that Notice, a Covered Instrument is treated as though it had been issued directly to Treasury under the Programs.

Section III(E) of Notice 2010–2 provides the following rule to govern the sale by Treasury of stock of a corporation to public shareholders:

> *Section 382 treatment of stock sold by Treasury to public shareholders.* If Treasury sells stock that was issued to it pursuant to the Programs (either directly or upon the exercise of a warrant) and the sale creates a public group (''New Public Group''), the New Public Group's ownership in the issuing corporation shall not be considered to have increased solely as a result of such a sale. A New Public Group's ownership shall be treated as having increased to the extent the New Public Group increases its ownership pursuant to any transaction other than a sale of stock by Treasury, including pursuant to a stock issuance described in section 1.382–3(j)(2) or a redemption (see § 1.382–2T(j)(2)(iii)(C)). Such stock is considered outstanding for purposes of determining the percentage of stock owned by other 5-percent shareholders on any testing date, and section 382 (and the regulations thereunder) shall otherwise apply to the New Public Group in the same manner as with respect to other public groups.

This rule was created to prevent a loss corporation from experiencing an owner shift when Treasury sells stock to public shareholders. By its terms, the rule relies on the assumption that the stock sale ''creates a public group.'' As explained earlier in this preamble, § 1.382–2T(j)(3)(i), before it was superseded, required creation of a new public group when a 5-percent shareholder sold stock in a loss corporation to public shareholders. However, under § 1.382–3(j)(13) as now in effect, such a transfer does not create a new public group.

Explanation of Provision

The IRS and Treasury are concerned that the elimination of the segregation rule described earlier in this preamble may have unintentionally rendered inoperative the rule in Notice 2010–2 that protects a loss corporation from an owner shift when Treasury sells stock that it held pursuant to the Programs to public shareholders. To prevent this result, the temporary regulation modifies the effective date rule of TD 9638 to except from the changes to the segregation rules in that regulation the sale by the Treasury Department to public shareholders of any ''Program Instrument'' (an instrument issued pursuant to a Program or a Covered Instrument). As a result, a sale of stock by Treasury to the public will create a public group, and the rule of Section III(E) of Notice 2010–2 will continue to apply as intended. This provision will only affect the sale of a Program Instrument by the Treasury Department and will not affect the application of the segregation rule changes in TD 9638 to any other transactions involving stock of the corporations that participated in the Programs.

Special Analyses

These regulations are necessary to provide corporations with immediate guidance regarding the continuing effect of Notice 2010–2 in light of the change to the segregation rules provided by TD 9638. Because of the need for immediate guidance, the IRS and the Treasury Department are issuing temporary regulations which are effective immediately.

It has also been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. For the application of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the

Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.382–3T also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

■ **Par. 2.** Section 1.382–3 is amended by revising paragraph (j)(17) to read as follows:

§ 1.382–3 Definitions and rules relating to a 5-percent shareholder.

* * * * *

(j) * * *

(17) *Effective/applicability date.* [Reserved]. For further guidance, see § 1.382–3T(j)(17).

* * * * *

■ **Par. 3.** Section 1.382–3T is added to read as follows:

§ 1.382–3T Definitions and rules relating to a 5-percent shareholder (temporary).

(a) through (j)(16) [Reserved]. For further guidance see § 1.382–3(a) through (j)(16).

(17) *Effective/applicability date.* This paragraph (j) generally applies to issuances or deemed issuances of stock in taxable years beginning on or after November 4, 1992. However, paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and *Examples 5* through *13* of paragraph (j)(16) of this section apply to testing dates occurring on or after October 22, 2013, other than with respect to the sale of a Program Instrument by the Treasury Department. For purposes of this paragraph (j)(17), a Program Instrument is an instrument issued pursuant to a Program, as defined in Internal Revenue Service Notice 2010–2 (2010–2 IRB 251 (December 16, 2009)) (see § 601.601(a)(2)(ii)(B) of this chapter), or a Covered Instrument, as defined in that Notice. Taxpayers may apply paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and *Examples 5* through *13* of paragraph (j)(16) of this section in their entirety (other than with respect to a sale of a Program Instrument by the Treasury Department) to all testing dates that are included in a testing period beginning before and ending on or after October 22, 2013. However, the provisions described in the preceding sentence may not be applied to any date on or before the date of any ownership change that occurred before October 22, 2013, under the regulations in effect before October 22, 2013, and they may not be applied as described in the preceding sentence if such application would result in an ownership change occurring on a date before October 22, 2013, that did not occur under the regulations in effect before October 22, 2013. See § 1.382–3(j)(14)(ii) and (iii), as contained in 26 CFR part 1 revised as of April 1, 1994 for the application of paragraph (j)(10) to stock issued on the exercise of certain options exercised on or after November 4, 1992, and for an election to apply paragraphs (j)(1) through (12) retroactively to certain issuances and deemed issuances of stock occurring in taxable years prior to November 4, 1992.

(18) *Expiration date.* This section 1.382–3T expires on or before July 28, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 18, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–17832 Filed 7–30–14; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9686]

RIN 1545–BF59

Material Advisor Penalty for Failure To Furnish Information Regarding Reportable Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assessment of penalties against material advisors who fail to timely file a true and complete return. The regulations implement amendments made by the American Jobs Creation Act of 2004. These regulations affect material advisors responsible for disclosing reportable transactions.

DATES: *Effective Date:* These regulations are effective on July 31, 2014.

Applicability Date: For dates of applicability, see § 301.6707–1(f).

FOR FURTHER INFORMATION CONTACT: James G. Hartford at (202) 317–6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6707. On December 22, 2008, a notice of proposed rulemaking (REG–160872–04) was published in the **Federal Register** (73 FR 78254) relating to the penalty under section 6707 of the Internal Revenue Code imposed on material advisors for failure to furnish information regarding reportable transactions (the proposed regulations). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision with revisions as discussed in this preamble.

Section 6707 was originally added to the Code by section 141(b) of the Tax Reform Act of 1984, Public Law 98–369, 98 Stat. 494 (July 18, 1984). At that time, section 6707 imposed a penalty for failing to timely register a tax shelter or for filing false or incomplete information with respect to the tax shelter registration. Section 301.6707–1T of the temporary regulations implementing the penalty was published shortly after section 6707 became law.

The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. As amended by AJCA, section 6707 imposes a penalty on a material advisor required to file a return under section 6111(a) with respect to a reportable transaction who fails to timely file such a return or who files the return with false or incomplete information. Section 6707, as amended, is effective for returns due after October 22, 2004.

In 2007, the Treasury Department and the IRS issued Rev. Proc. 2007–21, 2007–1 CB 613 (February 26, 2007), (see § 601.601(d)(2)(ii)(*b*)), of this chapter, to provide procedures for requesting rescission of a penalty assessed under section 6707 for failure by a material advisor to disclose a reportable transaction and under section 6707A for failure by a taxpayer to disclose a reportable transaction. For each penalty, the revenue procedure provides the deadline by which a person must

request rescission; the information the person must provide in the rescission request; where the person must submit the rescission request; and the rules governing requests for additional information from the person requesting rescission. In addition, the revenue procedure sets forth the factors that weigh in favor of and against granting rescission. For example, one factor described in the revenue procedure as weighing in favor of rescission of the section 6707 penalty is filing a Form 8918, ''Material Advisor Disclosure Statement,'' after the due date but before the taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement,'' identifying the material advisor as an advisor with respect to the transaction or before the IRS contacts the material advisor concerning the reportable transaction.

On December 22, 2008, proposed regulations implementing the penalty under section 6707 were published. The proposed regulations set forth the rules for application of the penalty under section 6707, including examples and relevant definitions such as the definition of incomplete information, false information, and when a failure is intentional so that the higher penalty with respect to listed transactions will apply. The proposed regulations also adopted the factors described in Rev. Proc. 2007–21 that will be considered when determining whether a request for rescission of a section 6707 penalty with respect to a non-listed reportable transaction will be granted. In addition, the proposed regulations generally restated the existing authority of the Secretary to prescribe procedures for requesting rescission by revenue procedure or other guidance published in the Internal Revenue Bulletin. The proposed regulations did not address the procedures for requesting rescission in Rev. Proc. 2007–21, such as the deadline, the information provided, where to submit the request, and requests for additional information.

Explanation of Revisions

These regulations remove temporary regulations § 301.6707–1T (TD 7964), 49 FR 32712, which implement section 6707 as enacted in 1984. Amendments to section 6707 made by section 816 of AJCA render temporary regulations § 301.6707–1T obsolete.

The final regulations make several substantive changes to the proposed regulations. First, a new paragraph (iii) has been added under § 301.6707–1(a)(1)(B) regarding the penalty in the case of listed transactions. This new paragraph clarifies that only one section 6707 penalty will apply in the case of a transaction that is both a listed transaction and a reportable transaction other than a listed transaction, and that the penalty that applies in these cases is the higher penalty for listed transactions under § 301.6707–1(a)(1)(B). Section 301.6707–1(a)(1) of the final regulations has also been clarified to provide that if there is a failure with respect to more than one reportable or listed transaction, a material advisor will be subject to a separate penalty for each transaction.

In addition, § 301.6707–1(a)(2), which describes gross income derived from a transaction for purposes of determining the penalty in the case of a listed transaction, has been clarified to provide that only fees from a listed transaction for which the advisor is a material advisor are taken into account for purposes of computing the penalty. A new example 4 has been added to illustrate this clarification.

Finally, § 301.6707–1(e) of the proposed regulations is modified to provide additional guidance on rescission of the penalty under section 6707. Under Rev. Proc. 2007–21 and § 301.6707–1(e)(3)(i) of the proposed regulations, filing a Form 8918, ''Material Advisor Disclosure Statement,'' after the due date will be a factor weighing strongly in favor of rescission unless the form is filed after the taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement,'' identifying the material advisor as an advisor with respect to the transaction or after the IRS contacts the material advisor concerning the reportable transaction. The final regulations modify this rule to also consider whether circumstances indicate that the material advisor delayed filing the Form 8918, recognizing that the mere filing of a Form 8886 before filing the Form 8918, alone, is not indicative of whether rescission is appropriate. Accordingly, the final regulations provide that if a material advisor unintentionally failed to file a Form 8918, but then files a properly completed form with the IRS, that filing will be a factor that weighs in favor of rescission of the section 6707 penalty if the facts suggest that the material advisor did not delay filing the form until after the IRS had taken steps to identify that person as a material advisor with respect to that particular transaction. The final regulations further provide that the late filing will not weigh in favor of rescission if the facts and circumstances suggest that the material advisor delayed filing the Form 8918 until after the material advisor's client filed its Form 8886 (or successor form) disclosing the client's participation in the particular reportable transaction.

In addition, the final regulations clarify the language of the proposed regulations in a few other ways not intended to be substantive, including clarification of examples.

Effect on Other Documents

Sections 4.04, 4.05, and 4.06 of Revenue Procedure 2007–21, relating to the factors for rescission of the section 6707 penalty, are superseded as of July 31, 2014.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. The IRS has determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received on the proposed regulations.

Drafting Information

The principal author of these regulations is James G. Hartford of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** Section 301.6707–1 is added to read as follows:

§ 301.6707–1 Failure to furnish information regarding reportable transactions.

(a)(1) *In general.* A material advisor who is required to file a return under section 6111(a) of the Internal Revenue Code (Code) with respect to any reportable transaction who fails to file a timely return in accordance with § 301.6111–3(e) or who files a return with false or incomplete information with respect to the reportable transaction will be subject to a penalty. A material advisor who fails to file a timely return or who files a false or incomplete return with respect to more than one reportable transaction will be subject to a separate section 6707 penalty for each transaction.

(i) *Reportable transactions.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to any reportable transaction other than a listed transaction is $50,000.

(ii) *Listed transactions.* (A) *In general.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to a listed transaction is the greater of $200,000 or 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(B) *Intentional action or failure.* If the failure or action subject to the penalty is with respect to a listed transaction and is intentional, the penalty is the greater of $200,000 or 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(C) *Transaction that is both a listed transaction and reportable transaction other than a listed transaction.* In the case of a penalty imposed under section 6707 with respect to a transaction that is both a listed transaction and a reportable transaction other than a listed transaction, the penalty under this paragraph (a)(1)(ii), and not the penalty under paragraph (a)(1)(i) of this section, will apply.

(2) *Gross income derived by the material advisor.* For purposes of calculating the amount of the penalty with respect to a listed transaction, the gross income derived by the material advisor will be determined in accordance with § 301.6111–3(b)(3)(ii) of this chapter. If a person is a material advisor with regard to more than one type of listed transaction, the gross income derived from each type of listed transaction will be considered separately and will not be aggregated to determine the amount of any section 6707 penalty for failing to make a proper return under section 6111(a). Further, only gross income derived from listed transactions for which the advisor is a material advisor under section 6111 is taken into account for purposes of computing the penalty.

(b) *Definitions*—(1) *Derive.* The term ''derive'' is defined in § 301.6111–3(c)(3).

(2) *False information.* For purposes of this section, the term ''false information'' means information provided on a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the Internal Revenue Service (IRS) that is untrue or incorrect when the Form 8918 (or successor form) was filed. False information does not include information provided on a Form 8918 (or successor form) filed with the IRS that is immaterial or that is untrue or incorrect due to a mistake or accident after the exercise of reasonable care.

(3) *Incomplete information.* For purposes of this section, the term ''incomplete information'' means a Form 8918 (or successor form) filed with the IRS that does not provide the information required under § 301.6111–3(d). A Form 8918 (or successor form) filed with the IRS will not be considered incomplete when the information not provided on the form is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. Whether information is immaterial will be determined based upon the facts and circumstances surrounding each failure to file or filing of an incomplete return. A material advisor who completes the form to the best of the material advisor's ability and knowledge after the exercise of reasonable effort to obtain the information will not be considered to have filed incomplete information within the meaning of this section. A Form 8918 (or successor form) will be considered to provide incomplete information when it omits information required to be provided under § 301.6111–3(d) or contains a statement that the omitted information will be provided upon request.

(4) *Intentional.* For purposes of this section, the failure to timely file a return or the submission of a return with false or incomplete information is intentional if—

(i) The material advisor knew of the obligation to file a return and knowingly did not timely file a return with the IRS; or

(ii) The material advisor filed a return knowing that it was false or incomplete.

(5) *Listed transaction.* The term ''listed transaction'' is defined in section 6707A(c)(2) of the Code and § 1.6011–4(b)(2) of this chapter.

(6) *Material Advisor.* The term ''material advisor'' is defined in section 6111(b)(1) of the Code and § 301.6111–3(b).

(7) *Reportable transaction.* The term ''reportable transaction'' is defined in section 6707A(c)(1) of the Code and § 1.6011–4(b)(1) of this chapter.

(c) *Assessment of penalty*—(1) *Intentional failure determined based on all the facts and circumstances.* Whether a material advisor intentionally failed to timely file a return or intentionally filed a false or incomplete return will be determined based upon all the facts and circumstances surrounding the non-filing or filing of a false and/or incomplete return. The higher penalty under the flush language of section 6707(b)(2) will not apply to any material advisor whose failure to timely file or whose furnishing of false or incomplete information was unintentional. The failure to timely file a return, or filing a return with false or incomplete information, will be considered unintentional if the material advisor subsequently files a true and complete return prior to the earlier of the date that any taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form) identifying the material advisor with respect to the reportable transaction in question, or the date the IRS contacts the material advisor concerning the reportable transaction.

(2) *Individual liability in the case of more than one material advisor.* If there is more than one material advisor who is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under section 6707 may be assessed against each material advisor who fails to timely file or files a return with false or incomplete information. The determination of whether the failure or action subject to the penalty is intentional will be made individually for each material advisor.

(3) *Designation agreements.* A material advisor who is required to file a return under section 6111 and who is a party to a designation agreement within the meaning of § 301.6111–3(f) is subject to a penalty under section 6707 if the designated material advisor fails to file a return timely or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to file a return timely, or files a return with false or incomplete information, the nondesignated material advisor who is a

party to the designation agreement will not be treated as intentionally failing to file the return, or intentionally filing a return with false or incomplete information, unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to file a true and complete return timely.

(d) *Examples.* The rules of paragraphs (a) through (c) of this section are illustrated by the following examples:

Example 1. Advisor A becomes a material advisor as defined under section 6111(b)(1) and § 301.6111–3(b) in the fourth quarter of 2014 with respect to a reportable transaction other than a listed transaction, and Advisor B also becomes a material advisor in the same quarter with respect to the same reportable transaction. Advisors A and B fail to timely file the Form 8918 with respect to the reportable transaction. Under paragraph (a)(1)(ii) of this section, the penalty for failure by a material advisor to timely disclose a reportable transaction other than a listed transaction is $50,000. Because the section 6707 penalty applies to each material advisor independently under paragraph (c)(2) of this section, Advisors A and B each are subject to a section 6707 penalty of $50,000.

Example 2. Same as *Example 1,* except that Advisor B timely files the Form 8918. Advisors A and B did not enter into a designation agreement. Accordingly, paragraph (c)(3) of this section does not apply and only Advisor A is subject to a $50,000 section 6707 penalty.

Example 3. Advisor C becomes a material advisor to Client X on January 5, 2015, with respect to a listed transaction. Advisor C derives $400,000 in gross income from his advice to Client X because he expects to receive that amount from Client X, even though he has not yet received that amount. On January 5, 2016, Advisor C becomes a material advisor to Client Y with respect to the same type of listed transaction. Advisor C derives $100,000 in gross income from his advice to Client Y because he expects to receive that amount from Client Y, even though he has not yet received that amount. At no time did Advisor C file a Form 8918 to disclose the listed transaction. For purposes of this example, assume that Advisor C's failure to file a Form 8918 was unintentional. Therefore, under paragraph (c)(2) of this section, Advisor C is subject to a section 6707 penalty based on the gross income derived from Client X and Client Y. Accordingly, Advisor C is subject to a penalty of $250,000 (50 percent of $500,000, the gross income derived from Clients X and Y).

Example 4. Same as *Example 3,* except that the gross income Advisor C expects to receive from his advice to Client Y (a C corporation) is $20,000. Because the material advisor fee threshold is not satisfied with respect to Client Y, Advisor C is not a material advisor to Client Y with respect to the listed transaction. Advisor C is, however, a material advisor with respect to Client X with respect to the same listed transaction. Therefore, Advisor C is subject to a section 6707 penalty with respect to the failure to timely file a Form 8918 disclosing the listed transaction. Although Advisor C provided advice with respect to two transactions that are the same type of listed transaction, Advisor C was only a material advisor with respect to advice provided to Client X. Therefore, under paragraph (c)(2) of this section Advisor C is subject to a section 6707 penalty based only on the gross income derived from Client X. Accordingly, Advisor C is subject to a penalty of $200,000 (50 percent of $400,000, the gross income derived from Client X).

Example 5. Same as *Example 3,* except that Advisor C files a Form 8918 disclosing the listed transaction on November 16, 2015. Because Advisor C becomes a material advisor to Client X on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 (the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with regard to the reportable transaction). See § 301.6111–3(e). Therefore, Advisor C did not timely file the Form 8918. Advisor C is subject to a $200,000 penalty under section 6707 for his unintentional failure because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to a listed transaction that was not disclosed only included $400,000 of gross income for advice to Client X. By the time that Advisor C provides advice to Client Y on January 5, 2016, Advisor C has disclosed the listed transaction.

Example 6. Same as *Example 3,* except that Advisor C files the Form 8918 on February 16, 2016, disclosing the listed transaction. Because Advisor C first becomes a material advisor with respect to the listed transaction on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 regardless of the fact that Advisor C is also a material advisor to a second client, Client Y, with respect to the same listed transaction. This is because under the facts of *Example 3,* Advisor C ''becomes'' a material advisor on January 5, 2015. The date on which a material advisor ''becomes'' a material advisor is determinative of the due date for the Form 8918 under § 301.6111–3(e). Therefore, when Advisor C files the Form 8918 on February 16, 2016, the form is not timely filed under section 6111. Under paragraph (c)(2) of this section, Advisor C is subject to a penalty under section 6707 of $250,000 (50 percent of $500,000) because, as of the date that the Form 8918 was filed, the gross income that Advisor C received or expected to receive as a material advisor with respect to a listed transaction that was not disclosed included gross income for advice to both Client X ($400,000) and Client Y ($100,000).

Example 7. Advisor D becomes a material advisor as defined under section 6111(b)(1) and § 301.6111–3(b) in the first quarter of 2016 with respect to a reportable transaction other than a listed transaction. Advisor D does not file a Form 8918 by April 30, 2016. The transaction is then identified as a listed transaction in published guidance on July 7, 2016. Advisor D knew that he had a new obligation to file a Form 8918 by October 31, 2016, and intentionally fails to file the Form 8918. Advisor D is subject to only one penalty, in the amount of the greater of $200,000, or 75 percent of the gross income he derived from the transaction, for intentionally failing to disclose the listed transaction in accordance with § 301.6111–3(d)(1) and (e).

Example 8. Same as *Example 7,* except that Advisor D filed a Form 8918 disclosing the listed transaction on October 15, 2016. As a result of that disclosure, Advisor D is not subject to the section 6707 penalty amount described in § 301.6707–1(a)(1)(ii). However, because Advisor D did not timely file a Form 8918 by April 30, 2016, the due date for the Form 8918 with respect to the reportable transaction for which Advisor D became a material advisor in the first quarter of 2016, Advisor D is subject to a section 6707 penalty of $50,000 as described in § 301.6707–1(a)(1)(i). The disclosure of the listed transaction does not correct Advisor D's initial failure to disclose the reportable transaction by April 30, 2016.

(e) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707 penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction; and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a material advisor to request rescission of a section 6707 penalty by guidance published in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The material advisor, upon becoming aware of the failure to disclose a reportable transaction in accordance with section 6111 and the regulations thereunder, filed a complete and proper, albeit untimely, Form 8918 (or successor form). This factor weighs in favor of rescission if circumstances suggest that the material advisor did not delay in filing an untimely but properly completed Form 8918 (or successor form) until after the IRS had taken steps

to identify the person as a material advisor with respect to the reportable transaction. For instance, this factor will weigh strongly in favor of rescission if the material advisor files the Form 8918 (or successor form) prior to the date the IRS contacts the material advisor concerning the reportable transaction. However, this factor will not weigh in favor of rescission if the facts and circumstances indicate that the material advisor delayed filing the Form 8918 (or successor form) until after a taxpayer files a Form 8886 (or successor form) identifying the material advisor with respect to the reportable transaction in question.

(ii) The material advisor's failure to disclose the reportable transaction properly was due to an unintentional mistake of fact that existed despite the material advisor's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The material advisor has an established history of properly disclosing other reportable transactions and complying with other tax laws, including compliance with any requests made by the IRS under section 6112, if applicable.

(iv) The material advisor demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in guidance published in the Internal Revenue Bulletin for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The presence or absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission; rather the determination will be made in consideration of all of the factors and any other facts and circumstances.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to collectability of, or liability for, the penalties (except that the Commissioner (or the Commissioner's delegate) may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after July 31, 2014.

§ 301.6707–1T [Removed]

■ **Par. 3.** Section 301.6707–1T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 26, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–17932 Filed 7–30–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0319]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Treasure Island, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Treasure Island Causeway Bridge, mile 119.0, Treasure Island, Florida. Changing the schedule from on signal to three times an hour during the week and twice an hour on the weekends will reduce vehicle traffic issues caused by the bridge openings while providing for the reasonable needs of navigation.

DATES: This rule is effective September 2, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0319]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email, Mr. Gene Stratton, Chief Operations Section, Seventh Coast Guard District Bridge Branch at 305–415–6740, email *allen.e.stratton@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, 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
§ Section Symbol

A. Regulatory History and Information

On November 13, 2013, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Treasure Island, FL'' in the **Federal Register** (78 FR 67999). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Treasure Island Causeway Bridge crosses the Gulf Intracoastal Waterway at mile 119.0, Treasure Island, Pinellas County, Florida. This change would reduce the vehicle traffic back-ups caused by the opening of the bridge while providing for the reasonable needs of navigation.

The Treasure Island Bridge is a double-leaf bascule bridge that provides a vertical clearance of 21 feet in the closed position.

The City of Treasure Island requested a change to the Treasure Island Causeway Bridge regulation due to an increase in vehicle traffic in this area. Based on the bridge logs, this bridge opens on average less than twice an hour on signal. Fewer scheduled openings at regular intervals between 7

a.m. and 7 p.m. would reduce the vehicle traffic back-ups caused by the opening of the bridge.

C. Discussion of Comments and Changes

The Coast Guard provided a comment period of 90 days and no comments were received. No changes have been made to the proposed rule.

D. Discussion of Final Rule

The current operating regulation governing the Treasure Island Causeway Bridge at 33 CFR 117.267(g) was for the old bridge which required the bridge to open four times per hour on the quarters between 7 a.m. and 7 p.m. and to open on signal if at least ten minutes advance notice was given between 11 p.m. and 7 a.m. However, since the old bridge was replaced, the new bridge has been operating under 33 CFR 117.5 which requires the bride to open on signal. This final rule allows the bridge to open three times an hour during the week and twice an hour on the weekends which will reduce vehicle traffic congestion through this area by requiring less frequent openings. The Coast Guard does not anticipate longer bridge opening periods due to an accumulation of vessels, since the bridge currently opens less than twice an hour on average.

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 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 Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This action will have a minor impact on vessels transiting the Gulf Intracoastal Waterway in the vicinity of Treasure Island, Florida as vessels will still be able to transit the bridge on specific intervals and this action will still meet the reasonable needs of navigation. This action is designed to improve vehicle traffic flow in downtown Treasure Island.

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 no 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 action will not have a significant economic impact on a substantial number of small entities for the following reasons: This bridge generally does not open but two to three times an hour on a regular basis. Placing a regulation on this bridge, reducing these openings, will not unreasonably disrupt vessels transiting the Gulf Intracoastal Waterway in this area.

3. 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).

4. 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 does not have implications for federalism.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 might disproportionately affect children.

10. 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.

11. 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.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 involves changing the open on demand bridge operating schedule to three times an hour Monday through Friday and twice an hour on Saturday, Sunday and Federal holidays and will meet the reasonable needs of navigation. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.287, revise paragraph (g) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0 shall open on signal except that from 7 a.m. to 7 p.m. the draw need open on the hour, 20 minutes after the hour and 40 minutes after the hour Monday through Friday and on the quarter hour and three quarter hour on Saturday, Sunday and Federal holidays.

* * * * *

Dated: June 18, 2014.

J. H. Korn,

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

[FR Doc. 2014–18079 Filed 7–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0411]

RIN 1625–AA00

Safety Zone; Gulf Intracoastal Waterway, Mile Marker 49.0 to 50.0, West of Harvey Locks, Bank to Bank, Bayou Blue Pontoon Bridge, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf Intracoastal Waterway extending from Mile Marker 49.0 to Mile Marker 50.0, bank to bank, West of Harvey Locks, Terrebone Parish, LA. This Safety Zone is needed to protect the general public, vessels, and tows from destruction, loss or injury due to repairs of the Bayou Blue Pontoon Bridge and associated hazards.

DATES: This rule is effective without actual notice from July 31, 2014 until August 10, 2014. For the purposes of enforcement, actual notice will be used from June 23, 2014, until July 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0411]. 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 MST1 Isaac Chavalia, U.S. Coast Guard; telephone (985) 850–6456, email *Isaac.J.Chavalia@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:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
WHL West of Harvey Locks
GIWW Gulf Intracoastal Waterway
COTP Captain of the Port

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 an 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. The Coast Guard was made aware of the necessary Bayou Blue Pontoon Bridge repairs on May 6, 2014. The Coast Guard reviewed the details for the necessary bridge repairs and determined that additional safety measures are necessary during these repairs to maintain safety of navigation. Completing the full NPRM process would be contrary to public interest as it would delay the immediate action needed to protect the general public, vessel and tows from potential hazards associated with the repairs of the Bayou Blue Pontoon Bridge, Mile Marker 49.8, Gulf Intracoastal Waterway (GIWW), West of the Harvey Locks (WHL). Additionally, completing the NPRM process is impracticable and it would unnecessarily delay the bridge repairs.

For the same reasons, 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**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect the general public, vessel and tows from hazards associated with the repairs of the Bayou Blue Pontoon Bridge, Mile Marker 49.8, GIWW, WHL.

B. Basis and Purpose

The Coast Guard received notice on May 6, 2014, that the construction and repair work on the Bayou Blue, LA State Route 316, Pontoon Bridge, Mile Marker 49.8, GIWW, WHL, to repair the bridge to better serve the maritime commerce will continue through mid 2014. To protect the general public, vessels and tows from destruction, loss or injury due to the hazards associated with these construction operations in and around the waterways, the Coast Guard is establishing this temporary final safety zone which will continue through Aug. 10, 2014.

The legal basis and authorities for this rulemaking establishing a safety zone are found in 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of this safety zone is to provide additional safety measures for persons and vessels transiting in and through a specified area on the waterway and to protect life and property during the construction and repair operations on the Bayou Blue, LA State Route 316, Pontoon Bridge, Mile Marker 49.8, GIWW, WHL. There will be a work barge, support vessels and personnel present in the channel associated with the construction and repair operation. This operation poses significant safety hazards to both vessels and mariners operating in the vicinity of the Bayou Blue, LA State Route 316, Pontoon Bridge, Mile Marker 49.8, GIWW, WHL.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone in the GIWW extending from Mile Marker 49.0 to Mile Marker 50.0, bank to bank, WHL, Terrebonne Parish, LA. This Safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to repairs of the Bayou Blue Pontoon Bridge and associated hazards.

The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of schedule changes in the construction work and changes in effective dates and times for the safety zone. At all times, vessels and tows transiting between GIWW Mile Markers 49.0 to 50.0, WHL, are required to proceed at slowest safe speed to minimize wakes until construction is completed or August 10, 2014, whichever occurs earlier. In order to facilitate repairs, the following waterway schedule will be implemented Mondays through Fridays beginning June 23, 2014, and continuing through August 10, 2014. From 6:00 a.m. to 10:30 a.m. there will be a restricted clearance of 40 feet limiting access for all transits with the exception of small tows less than 40 feet wide and small boats. From 10:30 a.m. to 1:30 p.m. the waterway will be open to all tows with eastbound traffic allowed to transit first, followed by westbound traffic. From 1:30 p.m. to 6:00 p.m. there will be a restricted clearance of 40 feet limiting access for all transits with the exception of small tows less than 40 feet and small boats. Outside of the above schedule and on weekends, mariners will be able to transit through the work zone unrestricted. Additionally, no waterway restrictions will occur during the following holidays: Independence Day (July 4, 2014). Work to repair the fender will be performed on a crane barge staged in the channel during the closure schedule. All mariners are to contact the bridge operator on VHF–FM Channel 13 or at telephone 985–857–3666 in advance of arriving at the bridge for clearance and passing instructions. Once cleared for passage, mariners should exercise extreme caution and transit through the bridge at the slowest safe speed.

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 safety zone listed in this rule will only restrict vessel traffic during construction and repair operations and enforcement periods are short in duration. The effect of this regulation will not be a significant regulatory action because: (1) This rule will only affect vessel traffic for short durations of time; (2) vessels may request permission from the HWY 316 bridge operator on VHF–FM Channel 13 or at telephone 985–857–3666 to deviate from this rule; and (3) the impacts on routine navigation are expected to be minimal due to scheduled periods without channel restrictions. Notifications to the marine community will be made through Broadcast Notice to Mariners and Local Notice to Mariners. These notifications will allow the public to plan operations around the affected area and enforcement periods.

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 transit in the affected portions of the GIWW in the vicinity of the Bayou Blue, LA State Route 316, Pontoon Bridge MM 49.8 WHL. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The zone is limited in size, enforcement periods are of short duration and vessel traffic may request permission from the COTP Morgan City or a designated representative to deviate from the safety zone.

If you are a small business entity and are significantly affected by this regulation, please contact MST1 Isaac Chavalia, Marine Safety Unit Houma, at (985) 850–6456.

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 INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The safety zone provides safety for the public while the Bayou Blue, LA State Route 316, Pontoon Bridge MM 49.8 WHL is refurbished. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0411 is added to read as follows:

§ 165.T08–0411 Safety Zone; Gulf Intracoastal Waterway, Mile Marker 49.0 to Mile Marker 50.0, West of Harvey Locks, Bank to Bank, Bayou Blue Pontoon Bridge, Lafourche Parish, LA.

(a) *Location.* The following area is a safety zone: all waters of the GIWW, from Mile Marker 49.0 to 50.0, WHL, bank to bank, Houma, Terrebonne Parish, LA.

(b) *Enforcement Areas.* Gulf Intracoastal Waterway, Mile Marker 49.0 to Mile Marker 50.0, WHL, bank to bank, Lafourche Parish, LA.

(c) *Effective date.* This rule is effective without actual notice from July 31, 2014 until August 10, 2014. For the purposes of enforcement, actual notice will be used from June 23, 2014, until July 31, 2014.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) Morgan City.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the COTP Morgan City, the Hwy 316 bridge tender, or a designated representative. The Hwy 316 bridge tender can be contacted on VHF–FM Channel 13 or at telephone 985–857–3666 in advance of arriving for clearance and passing instructions.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Morgan City, the Hwy 316 bridge tender, or a designated representative and pass at slowest safe speed to minimize wake.

(4) While the safety zone is in effect, there will be restricted clearance of 40 feet for marine traffic on the GIWW, from Mile Marker 49.0 to 50.0 from 6:30 a.m. to 10:30 a.m. and 1:30 p.m. to 6:00 p.m., Monday through Friday. To minimize waterway impact, this area will be open without restriction to marine traffic from 6:00 p.m. to 6:30 a.m. and from 10:30 a.m. to 1:30 p.m. or until traffic clears, Monday through Friday.

(5) All persons and vessels shall comply with the instructions of the COTP Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(e) *Informational Broadcasts.* The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement periods for the safety zone as well as any changes in the planned schedule.

Dated: June 20, 2014.

D.G. McClellan,

Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.

[FR Doc. 2014–18081 Filed 7–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215 and 218

RIN 0596–AD18

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities and Project-Level Predecisional Administrative Review Process

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) issues this final rule to amend regulations concerning administrative reviews (appeals and objections) for projects or activities that are categorically excluded under the National Environmental Policy Act. The combined effect of the Consolidated Appropriations Act of 2014 and the 2014 Farm Bill makes the 36 CFR Part 215 regulations (post-decisional appeals) obsolete and permits withdrawal in their entirety. An amendment is also made to update the legislative authority provision for 36 CFR Part 218 (pre-decisional objections) and to include a statutory prohibition contained in the referenced legislation. The final rule enables the Department to meet the intent of Congress.

DATES: This rule is effective July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Deborah Beighley, Assistant Director, Judicial and Administrative Review, Ecosystem Management Coordination staff, at 202–205–1277 or via email at *dbeighley@fs.fed.us,* or Joel Strong, National Litigation Coordinator, Judicial and Administrative Review, Ecosystem Management Coordination staff, at 202–205–0939 or via email at *jstrong@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department gives notice that Part 215 of Title 36 of the Code of Federal Regulations is repealed in conformity with the Consolidated Appropriation Act of 2014, Public Law 113–76, 128 Stat. 5 (January 17, 2014) and the Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649 (February 7, 2014). Further, technical amendments are made to update the legislative authority provision for Part 218 of Title 36 of the Code of Federal Regulations and to include a statutory prohibition contained in the referenced legislation in 36 CFR 218.23(a). This rulemaking is ministerial in nature.

1. Background

In 1992, Congress enacted the Appeals Reform Act (16 U.S.C. 1612 note) (ARA) directing the Secretary of Agriculture to establish a notice and comment process for certain Forest Service projects and activities and modify the agency's voluntarily provided, post-decisional administrative appeal procedures concerning such projects. Implementing regulations were promulgated in 1993 (58 FR 58904) and subsequently revised in 2003 (68 FR 33582). The 1993 and 2003 rulemakings directed that project or activity decisions that had been categorically excluded from documentation in an environmental assessment or environmental impact statement were exempt from the regulatory procedures. That Department's statutory interpretation set forth in the regulations was the subject of litigation. See, for example, *Summers* v. *Earth Island Institute,* 555 U.S. 488 (2009); *Wilderness Society* v. *Rey,* 622 F.3d 1251 (9th Cir. 2010); *Wildlaw* v. *United States Forest Service,* 471 F.Supp.2d 1221 (M.D. Ala. 2007).

On March 19, 2012, the U. S. District Court for the Eastern District of California issued a nationwide injunction permanently enjoining the Forest Service from implementing 36 CFR 215.4(a) and 215.12(f) (concerning categorically excluded projects). The United States appealed that ruling. In response to the injunction, the Chief of the Forest Service instructed all units of the National Forest System to refrain from applying Sections 215.4(a) and 215.12(f) and to provide notice, comment, and appeal opportunities for all projects and activities implementing forest plans that are documented in a decision memo, decision notice, or record of decision. In addition, Line Officers were instructed to write decision memos for any proposed action or activity that seeks to authorize the sale of timber, and to offer the opportunity for notice, comment, and appeal on these proposed actions.

Just prior to the District Court's ruling, Congress enacted Section 428 of the Consolidated Appropriation Act of 2012, Public Law 112–74 (December 23, 2011) (2012 Act) superseding the 1993 ARAs administrative review process. Specifically, Congress directed the Secretary to promulgate new regulations implementing a predecisional objection process exclusively for projects and activities documented with a Record of Decision or Decision Notice in lieu of the ARA process. The Secretary published regulations implementing the 2012 Act on March 27, 2013 (78 FR 18481). In light of ongoing judicial and legislative processes, the Secretary reserved taking action concerning the supplanted provisions in the ARA regulations or from addressing whether categorically excluded projects should be included within the new predecisional objection process.

On January 17, 2014, the President signed into law the Consolidated Appropriations Act, 2014, Public Law 113–76, 128 Stat. 5 (2014). Section 431 of that Act directs that the 1993 ARA and the 2012 Act shall not apply to any categorically excluded project or activity. The legislative history confirmed Congress' intention to return public involvement processes to the preexisting regulatory norm prior to the date of the District Court's injunction. The legislation recognizes and approves the Department's longstanding interpretation of the Appeals Reform Act in the Part 215 regulations and the Forest Service's other discrete mechanisms for providing for public participation in project development, including its agency National Environmental Policy Act (NEPA) procedures.

On February 7, 2014, the President signed into law the Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649. Section 8006 of that Act: (1) Repeals the Appeal Reform Act in its entirety, and (2) repeats the admonition of the recently enacted fiscal year (FY) 2014 Appropriation Act that the predecisional objection process required under the 2012 Act shall not apply to any categorically excluded project or activity. The legislative history again confirms Congress' design to address the management challenge that became apparent following the nationwide injunction by repealing the underlying statute in order to ensure nonsignificant actions may promptly proceed.

As a result of these statutes, the Department has repealed Part 215 and amended Part 218 of Title 36 of the Code of Federal Regulations. As to Part 215, those regulations' sole function was to implement the now repealed 1992 Appeals Reform Act. With the passage of the 2012 Appropriation, FY 2014 Appropriation, and the Agricultural Act

of 2014, it is indisputable that nothing remains to the ARA; its implementing regulations, thus, are defunct and obsolete. As to the Part 218 predecisional objection process, the Department has decided to update the authorities citation and replace the existing ''reserved'' proviso in 36 CFR 218.23(a) with the statutory prohibition of the FY 2014 Appropriation Act and Agricultural Act of 2014. No other changes to 36 CFR Part 218 are being undertaken at this time.

2. Transition

Congress has plenary authority to direct management of the National Forest System. The Department and Forest Service must faithfully execute all laws. The Department fully appreciates that Congress' instructions are mandatory, immediate, and intended to relieve the agency from any and all obligations under the ARA in order to expedite management activities.

In light of the new legislation and underlying lapse in operational authority, the Forest Service executed an orderly shutdown of Part 215 on March 5, 2014. Specifically, the Forest Service immediately ceased issuance of all notices pursuant to 36 CFR Part 215 and only accepted and conducted an appeal review and disposition where the legal notice of a decision memorandum was published in the newspaper of record on or prior to March 5, 2014. The Forest Service informed affected and interested persons of the legislative enactments and the orderly shutdown procedure.

3. Public Comment

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing advance notice and an opportunity for public comment. The Department has determined that there is good cause for immediate rulemaking without prior proposal and opportunity for comment. The referenced Appropriation and Agriculture laws are mandatory and leave no substantive discretion concerning the matters addressed in this rulemaking. Further, the subject of a technical amendment was previously noticed and public comment accepted during the March 2013 revision of 36 CFR Part 218. Revision of the authority provision in Part 218 is similarly technical and necessarily ministerial. For the same reasons, the Department finds good cause that these regulations shall be effective immediately pursuant to 5 U.S.C. 553(d)(3).

4. Regulatory Certifications

Environmental Impact

This final rule repeals Part 215 and amends Part 218 of Title 36 of the Code of Federal Regulations governing administrative reviews of certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final rule has been reviewed under Department procedures and Executive Order (E.O.) 12866 on regulatory planning and review, as amended by E.O. 13422. It has been determined that this final rule is not significant. This final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule repeals Part 215 and amends Part 218 of Title 36 of the Code of Federal Regulations governing administrative reviews of certain activities on National Forest System lands. The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act because this final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with Tribes is not required in connection with the final rule.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630 and has determined that this final rule does not pose the risk of a taking of protected private property.

Civil Justice Reform

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

The Department has reviewed the final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that

this final rule does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this final rule.

List of Subjects

36 CFR Part 215

Administrative practice and procedure; National forests.

36 CFR Part 218

Administrative practice and procedure; National forests.

Therefore, for the reasons set forth in the preamble, the Department hereby amends 36 CFR chapter II as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

■ 1. Under the authority of Section 431, Public Law 113–76; Section 8006, Public Law 113–79, part 215 is removed.

PART 218—PROJECT–LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

■ 2. The authority citation for part 218 is revised to read as follows:

Authority: Pub. L. 108–148, 117 Stat 1887 (16 U.S.C. 6515 note); Sec. 428, Pub. L. 112–74 125 Stat 1046; Sec. 431, Pub. L. 113–76; Sec. 8006, Pub. L. 113–79.

■ 3. Amend § 218.23 by adding paragraph (a) to read as follows:

§ 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

* * * * *

(a) Any project or activity categorically excluded from documentation in an environmental assessment or environmental impact statement.

* * * * *

Dated: June 20, 2014.

Robert Bonnie,

Under Secretary, NRE.

[FR Doc. 2014–18019 Filed 7–29–14; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 262

RIN 0596–AB61

Law Enforcement Support Activities

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises regulations regarding removal of obstructions, impoundment of personal property, payment of rewards, and payment for information and evidence in furtherance of an investigation. The revisions will clarify and concisely state the Agency's authority for setting reward amounts and will streamline the rules regarding payment for information and evidence in furtherance of an investigation. The revisions will also shorten the timeframe for impoundment procedures, change the posting requirement, and allow the Forest Service to retain unclaimed or abandoned personal property for administrative use.

DATES: The rule is effective September 2, 2014.

ADDRESSES: The public may inspect the record for the final rule at the Office of the Director, Law Enforcement and Investigations, 201 14th Street SW., Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday. Visitors are encouraged to call 703–605–4690 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kenneth Pearson, Assistant Director for Enforcement, at 703–605–4527, or via email at *kenpearson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 8 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background

Forest Service regulations at 36 CFR part 262, in effect since 1977, govern payment of rewards, payments for information and evidence in furtherance of an investigation, impoundment of property, and removal of obstructions from National Forest System lands. On February 16, 1994, the Forest Service published a proposed rule to amend 36 CFR part 262 (59 FR 7880). A final rule was never promulgated. Most of the comments received on the 1994 proposal to amend part 262 involved the meaning of terms used and proposed revisions that would permit the Agency to remove objects that are an impediment or a safety hazard to users of National Forest System lands.

In 2008, the Agency renewed its efforts to amend 36 CFR part 262. In addition to reviewing the comments on the 1994 proposal, the Forest Service reviewed 36 CFR part 262 to determine its applicability in view of changing laws, resource conditions, and other factors affecting management of National Forest System lands. For example, the structure of the Forest Service's Law Enforcement and Investigations staff changed in 1994 to provide for the Director of Law Enforcement and Investigations Staff to report directly to the Chief, rather than to the former Deputy Chief for Administration position (now the Deputy Chief for Business Operations). Accordingly, the proposed rule vested the authority to make or approve payment of rewards at 36 CFR 262.2 and payments for information and evidence in furtherance of an investigation at 36 CFR 262.3 with the Director of the Law Enforcement and Investigations. The proposed rule also revised limits on maximum amounts and approval authority for payment of rewards.

The Agency published a proposed rule in the **Federal Register** (73 FR 41003, July 17, 2008), for public notice and comment. Only one respondent commented on the proposed rule. This respondent's comment is addressed below. The changes included in the proposed rule are retained in the final rule. Additional revisions for clarity are discussed below.

2. Section-by-Section Analysis

36 CFR Part 262, Subpart A

Section 262.1 Definitions. This section contains definitions of terms pertaining to the law enforcement support activities in 36 CFR part 262, including ''camping equipment,'' ''damaging,'' ''forest officer,'' ''law enforcement personnel,'' ''unauthorized livestock,'' and ''vehicle.'' This section replaces current § 262.1, which will be redesignated as § 262.2.

Section 262.2 Rewards in connection with fire or property prosecutions. The Department is redesignating § 262.1, ''Rewards in connection with fire or property prosecution,'' as § 262.2 in the final rule. Paragraphs (a)(1) and (a)(2) of current § 262.1 set reward amounts for information leading to the arrest and conviction of any person for setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System or nearby lands. The reward amounts vary depending on whether the fire was willfully set. Paragraph (a)(3) of current § 262.1 sets a

reward amount for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States. The revisions to paragraphs (a)(1) through (a)(3) establish new reward payment limitations.

Paragraph (a)(4) of current § 262.1 authorizes payment of a reward for information and evidence in furtherance of an investigation of damage to or theft of all or part of a Pacific yew tree. This provision was added in 1991 (56 FR 29182, June 26, 1991) to address an increase in theft of and damage to the Pacific yew. At the time, the Pacific yew was the only known source of the chemical taxol, which is used to treat cancer. Since taxol is now synthetically produced, the demand for the Pacific yew no longer exists, and the tree is no longer being damaged or stolen. Consequently, the Department is removing paragraph (a)(4) from § 262.1 in the final rule.

The Department is revising paragraph (b) of current § 262.1 to include a cross-reference to 36 CFR 296.17, which, pursuant to Section 8 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470gg), authorizes payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of ARPA (16 U.S.C. 470ee or 470ff) for information and evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

Paragraph (e) of current § 262.1 states: ''Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass.'' The final rule amends paragraph (e) to read: ''Applications for a reward should be forwarded to the Special Agent in Charge who has responsibility for investigation of the violation of law.'' The Agency is replacing ''trespass'' with ''violation of law'' because ''trespass'' does not encompass the violations of law enumerated in § 262.1.

Section 262.3 Payment for information and evidence in furtherance of investigations. For simplicity and clarity, the Forest Service is combining § 262.2, ''Purchase of information in furtherance of investigations,'' and § 262.3, ''Purchase of evidence in furtherance of investigations,'' into § 262.3 and renaming it ''Payments for information and evidence in furtherance of investigations.'' Paragraph (a) revised in § 262.3, ''Approval of payments,'' establishes new dollar limits for payments for information and evidence in furtherance of an investigation and delegations of authority to the Chief of the Forest Service for approval of those payments. Paragraph (b) in revised § 262.3, ''Limitations,'' limits payments for information and evidence to further investigations of felony and misdemeanor violations.

36 CFR Part 262, Subpart B

The current heading for this subpart is ''Impoundments and Removals.'' The Department is revising the heading of subpart B to read, ''Administrative Impoundment and Removal.'' This revision clarifies that impoundment and removal under 36 CFR part 262, subpart B, of animals or personal property on National Forest System lands are administrative remedies governed by Agency regulations, as opposed to impoundment and seizure of property pursuant to arrests and searches, which are governed by the Federal Rules of Criminal Procedure for the United States District Courts.

Section 262.12 Impoundment of personal property. The current regulation sets out the procedure for impounding property that is on National Forest System lands without permission or in violation of law.

For clarity, the Department has split paragraph (a) of § 262.12 into two paragraphs, (a) and (b).

Paragraph (b) of current § 262.12 states that if the local Forest Officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices and that it be posted in at least one place on the property or in proximity thereto.

The Forest Service is redesignating paragraph (b) as paragraph (c) and revising it to allow impoundment 72 hours after a trespass is discovered and to eliminate the posting requirements in the local newspaper, at the county courthouse, and at local post offices. This revision aligns Forest Service regulations with the regulations of other Federal land management agencies and allows timely removal of property in trespass, thereby protecting National Forest System lands and resources.

The Department is redesignating paragraph (c) as paragraph (d) and is revising it for clarity.

Paragraph (d) of current § 262.12 states that if the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. The Department is redesignating paragraph (d) as paragraph (e) and revising it to give the Forest Service the option to retain and use unclaimed or abandoned personal property for official use, under authority delegated pursuant to the Federal Property and Administrative Services Act, as amended, and its implementing regulations (40 U.S.C. 552; 41 CFR 102–41.50), rather than having to offer the property for sale. In many cases, the cost of selling the property exceeds its value, and retention of unclaimed personal property for administrative use by the Forest Service could result in substantial savings to the public. The Department also is revising existing paragraph (d) to state, per existing authority, that the Federal Government will bill the property owner for costs associated with impoundment, removal, and storage.

Section 262.13 Removal of obstructions. This section currently provides for removal of vehicles or other objects that create an ''impediment or hazard to the safety, convenience, or comfort of other users of the National Forest System.'' The revised § 262.13 adds the authority to remove vehicles or other objects that are abandoned, vandalized, or a fire hazard or that impair access to or use of any area of the National Forest System. This revision addresses the increasing number of automobiles and other large objects being left on National Forest System lands. These abandoned objects need to be removed because they interfere with access to and use of National Forest System lands, may pose a fire or public safety hazard, and are often unsightly.

3. Response to Comments

The 60-day comment period on the proposed rule ended on September 15, 2008. Only one respondent commented on the proposed rule.

Comment. The respondent objected to elimination of posting requirements for impoundment of property in trespass. The respondent stated that impoundment and removal of animals or personal property on National Forest System lands are not and should not be administrative remedies governed by Agency regulations. The respondent further stated that the proposed rule would authorize Federal agents to seize and transport personal property and livestock without adhering to due process afforded by the United States Constitution.

Response. The portion of this comment addressing impoundment of livestock is beyond the scope of this rulemaking, which addresses only impoundment of personal property. The final rule retains the requirement in § 262.12(b) to post a notice of intention to impound the property in trespass in at least one place in the vicinity of the

property if the local Forest Officer does not know the name and address of the owner of property in trespass. Forest Service impoundment regulations have been in place for many years. They are consistent with applicable law and the impoundment regulations of other Federal land management agencies and allow timely removal of property in trespass, thereby protecting National Forest System lands and resources.

Comment. The respondent also stated that Federal agents should not seize or transport livestock without strictly adhering to due process requirements under State and Federal law.

Response. This comment is beyond the scope of this rulemaking, which does not modify § 262.10, Impoundment and disposal of unauthorized livestock.

4. Regulatory Certifications

Environmental Impact

This final rule revises law enforcement regulations governing certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review, as amended by E.O. 13422. It has been determined that this final rule is not significant. This final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule amends Forest Service law enforcement regulations governing removal of obstructions, impoundment of personal property, and payment of rewards and payments for information and evidence in furtherance of an investigation and will not impose any requirements on the public. The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act because this final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the final rule.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630 and has determined that this final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

The Department has reviewed the final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this final rule.

List of Subjects in 36 CFR Part 262

Investigations, Law enforcement, National forests, Seizures and forfeitures.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending title 36 of the Code of Federal Regulations, part 262 as follows:

PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

■ 1. Revise the authority citation for part 262 to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 470ee, 470ff, 470gg, 472, 551, 559a; 40 U.S.C. 552; 41 CFR 102–41.

■ 2. In subpart A, revise §§ 262.1 through 262.3 to read as follows:

Subpart A—Rewards and Payments

Sec.

262.1 Definitions.
262.2 Rewards in connection with fire or property prosecutions.
262.3 Payments for information and evidence in furtherance of investigations.

* * * * *

§ 262.1 Definitions.

The following definitions apply to subparts A and B:

Camping equipment. Personal property used in or suitable for camping, including any vehicle used for transportation and all equipment in possession of a person camping, other than food and beverages.

Damage. To injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

Forest officer. An employee of the Forest Service.

Law enforcement personnel. An employee of the Forest Service who is a special agent, law enforcement officer, or reserve law enforcement officer.

National Forest System. As defined in the Forest and Rangeland Renewable Resources Planning Act of 1974, the ''National Forest System'' includes all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration by the Forest Service as a part of that system.

Vehicle. Any device in, upon, or by which any person or property may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

§ 262.2 Rewards in connection with fire or property prosecutions.

(a) Law enforcement personnel may pay up to $50,000 as a reward for information and evidence leading to the conviction of any person for:

(1) Willfully or maliciously setting on fire or causing to be set on fire any timber, underbrush, or grass on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users;

(2) Kindling or causing to be kindled a fire on National Forest System lands or on non-National Forest System lands if the fire endangers or injures National Forest System lands or users; or

(3) Destroying, damaging, or stealing any property of the United States.

(b) See 36 CFR 296.17 for direction on payment of a reward from a criminal or civil penalty collected under Section 6 or 7 of the Archaeological Resources Protection Act (16 U.S.C. 470ee or 470ff) for information and evidence leading to the criminal conviction or civil liability of the person who paid the penalty.

(c) Officers and employees of the United States Department of Agriculture may not receive rewards under this section.

(d) Submit applications for a reward to the Special Agent in Charge who has responsibility for the investigation involved in the violation of law no later than 3 months after the date of conviction of an offender. Applications submitted after that date will not be considered. To allow all claimants to present their claims within the prescribed limit, the Special Agent in Charge shall not take action with respect to rewards regarding an investigation until 3 months after the date of conviction of an offender.

(e) The Special Agent in Charge reserves the right to refuse payment of a reward when it is determined that collusion or improper methods were used to secure the conviction involved.

(f) The Special Agent in Charge reserves the right to pay only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, but may, depending on the circumstances, determine that payment of a reward for each conviction is justified.

§ 262.3 Payments for information and evidence in furtherance of investigations.

(a) *Approval of Payment.* Law enforcement personnel may pay for information and evidence in furtherance of investigations of felonies and misdemeanors related to Forest Service administration.

(1) Criminal investigators in the GS–1811 series and other law enforcement personnel designated by the Chief of the Forest Service, Director of Law Enforcement and Investigations, or Special Agent in Charge may, without prior approval, pay up to $1,000 for information and evidence under this section.

(2) Payments over $1,000 and up to $5,000 require prior written approval from the Special Agent in Charge.

(3) Payments over $5,000 and up to $10,000 require prior written approval from the Director of Law Enforcement and Investigations.

(4) Payments over $10,000 require prior written approval from the Chief of the Forest Service.

(b) *Limitations.* Payments for information and evidence under this section are restricted to furthering investigations of felony and misdemeanor violations. Payments for information and evidence in furtherance of investigations of infractions are not authorized under this section.

Subpart B—Administrative Impoundment and Removal

■ 3. Revise the heading of subpart B to read as set forth above.

■ 4. Revise the heading of § 262.11 to read as follows:

§ 262.11 Impoundment of dogs.

* * * * *

■ 5. In § 262.12, revise the section heading and paragraphs (b) and (d) to read as follows:

§ 262.12 Impoundment of property.

* * * * *

(b) If the local Forest Officer does not know the name and address of the owner of property in trespass, impoundment may be effected at any time 72 hours after a notice of intention to impound the property in trespass is posted in at least one place in the vicinity of the property.

* * * * *

(d) The owner of impounded property may redeem it by the date set for its disposition, but shall remain liable for all costs associated with its impoundment, removal, transportation, and storage. Impounded property that is not redeemed by the date set for its disposition shall become the property of the United States and may be retained by the Forest Service for official use, sold at public sale to the highest bidder, or otherwise disposed of. When impounded property is sold, the forest officer conducting the sale shall furnish the purchaser with a bill of sale or other written instrument evidencing the sale. The original owner shall remain liable for all costs associated with impoundment, removal, transportation, and storage of the property, minus any amount received from the sale of the property.

* * * * *

■ 6. Revise § 262.13 to read as follows:

§ 262.13 Removal of obstructions.

A Forest Officer may remove or have removed a vehicle or other object on National Forest System lands that is abandoned or vandalized or that poses an impediment or hazard to the safety, convenience, or comfort of National Forest System visitors.

Dated: *June 24, 2014.*

Mary Wagner,

Associate Chief, Forest Service.

[FR Doc. 2014–18020 Filed 7–29–14; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AO74

Servicemembers' Group Life Insurance—Veterans' Group Life Insurance Regulation Update—ABO, VGLI Application, SGLI 2-Year Disability Extension

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) insurance regulations concerning Servicemembers' Group Life Insurance (SGLI) to reflect the statutory provisions of the Veterans' Benefits Act of 2010, which became law on October 13, 2010, and resulted in the need for amendments to change the SGLI Disability Extension period from 1 year to 2 years in duration; provide SGLI Traumatic Injury Protection (TSGLI) retroactive coverage effective from October 7, 2001, for all qualifying injuries regardless of the geographic location and military operation in which the injuries were incurred; and remove the SGLI and Veterans' Group Life Insurance (VGLI) Accelerated Benefits Option (ABO) discount rate. This rule also clarifies that ''initial premium'' refers to ''initial Veterans' Group Life Insurance premium,'' updates the current address of the Office of Servicemembers' Group Life Insurance (OSGLI), managed by Prudential Insurance Company of America, to reflect where the ABO application is mailed for processing, and corrects the OSGLI phone number. Finally, this rule removes the ABO application form from the regulation, and it corrects and clarifies language concerning the VGLI application period that was inadvertently incorrectly modified in a prior amendment of the regulations.

DATES: *Effective Date:* This rule is effective July 31, 2014.

Applicability Dates: In accordance with the statutory provisions, the applicability dates for the amendments in this final rule are as follows: Under Public Law 111–275, the amendments to 38 CFR 9.2 and 9.5 regarding the SGLI 2-year disability extension are applicable for servicemembers discharged on or after June 15, 2005; amendments to 38 CFR 9.14 regarding the ABO discount are applicable for payments made on or after October 13, 2010; and the amendments to 38 CFR 9.20 regarding retroactive TSGLI benefits are applicable for claims submitted on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory C. Hosmer, Senior Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext 4280. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Title IV of the Veterans' Benefits Act of 2010, Public Law 111–275, 124 Stat. 2864, 2879 (the Act), enacted on October 13, 2010, contains several provisions that directly affect the payment of and eligibility for certain SGLI related benefits. Therefore, VA is amending its regulations to reflect those statutory changes. VA is also making technical amendments to clarify, in current § 9.2(b)(2), that ''initial premium'' refers to ''initial Veterans' Group Life Insurance premium,'' to correct and clarify language concerning the VGLI application period, to update an address and phone number, and to remove a VA form.

38 CFR 9.2 and 9.5

Section 402 of the Act amended 38 U.S.C. 1968(a) by extending the duration of the SGLI disability extension period to 2 years from the date of an insured servicemember's separation or release from duty. Prior to enactment of the Act, the 2-year disability extension period was set to expire on September 30, 2011, thereafter reducing the length of the SGLI disability extension to 18 months for servicemembers discharged from duty on or after October 1, 2011. This final rule amends the first sentence of 38 CFR 9.2(b)(2) by deleting the term ''1-year period'' and replacing it with the term ''2-year period'' to reflect current law. This rule also amends the last sentence of 38 CFR 9.2(b)(2) to clarify that a servicemember insured under the SGLI disability extension has 1 year following ''termination of SGLI coverage'' to apply for VGLI coverage and not 1 year from the ''termination of duty'' as the last sentence of § 9.2(b)(2) currently reads. Under § 9.2(b)(2), for any servicemembers who are unemployable due to being totally disabled at the time of their discharge from service or release from assignment with eligibility for the SGLI disability extension, their VGLI coverage eligibility period begins the day following the end of the SGLI 2-year disability extension period or the day following the end of the total disability, whichever is earlier. The current language came about as a result of a prior regulatory submission that incorrectly substituted the word ''duty'' for the phrase ''SGLI coverage'' at the end of the last sentence of § 9.2(b)(2). In addition, in the last sentence of § 9.2(b)(2), we clarify that the ''initial premium'' referred to is the initial VGLI premium.

This rule also amends 38 CFR 9.5(d) to change the language that states ''1 year'' following termination of duty to ''2 years'' following termination of duty to reflect the fact that the SGLI disability extension period referenced in this paragraph is now 2 years in duration.

38 CFR 9.14

Title 38, United States Code, section 1980, provides for the payment of an ABO under the SGLI and VGLI programs. ABO is a provision of the SGLI and VGLI programs that allows payment to a terminally ill insured, in the amount requested by the insured, up to 50 percent of his or her insurance coverage. Formerly, 38 U.S.C. 1980(b)(1) required that all ABO payments be reduced by an interest deduction, which is the amount that has been actuarially determined to be the amount of interest lost due to the early payment of the insurance proceeds. Section 405 of the Act eliminated the interest reduction for ABO payments. VA is amending the implementing regulation, 38 CFR 9.14(e), to reflect that change. The phrase ''minus the interest reduction'' and all references to the ABO interest rate reduction are being deleted wherever they appear in 38 CFR 9.14(e).

We are also amending 38 CFR 9.14 by deleting the reproduction of the ABO claim form from the text of 38 CFR 9.14(f)(2). As a matter of policy, VA no longer includes forms in its regulations. This is because routine minor changes are often made to forms independent of the rulemaking process. Requiring the use of the rulemaking process to make minor, non-substantive changes to widely distributed forms is costly in money, time, and the delivery of benefits and serves no useful purpose. Furthermore, the most recent version of any required insurance form can be found on the VA Insurance Web site (*www.insurance.va.gov*). The words ''entitled 'Claim for Accelerated Benefits''' are being removed from § 9.14(f) as the current ABO claim form title is different and may be subject to change in the future.

Finally, 38 CFR 9.14(f) is being amended to show that the current address for the Office of Servicemembers' Group Life Insurance is 80 Livingston Avenue, Roseland, New Jersey 07068–1733, and the correct phone number for the office is 1–800–419–1473.

38 CFR 9.20

In 2005, Congress extended traumatic injury protection under 38 U.S.C. 1980A to any member who experienced a traumatic injury, as defined in section 1980A(b)(1), between October 7, 2001, and December 1, 2005, ''if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.'' Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Sec. 1032, Public Law 109–13, 119 Stat. 259–260 (2005).

In 2006, Congress provided a retroactive period of eligibility for traumatic injury protection for a member of the uniformed services who sustained a traumatic injury during the period beginning on October 7, 2001, and ending at the close of November 30, 2005, ''if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom.'' Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Sec. 501(b), Public Law 109–233, 120 Stat. 411 (2006).

In 2010, Congress amended section 1980A note to delete the phrase ''if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom.'' Sec. 408, Public Law 111–275. Section 408 of the Act, therefore, expanded the class of individuals who are eligible for retroactive TSGLI benefits to include all servicemembers of the uniformed services who have incurred a qualifying injury on or after October 7, 2001. Prior to Public Law 111–275, retroactive TSGLI benefits were payable for traumatic injury incurred between October 7, 2001 through November 30, 2005, only if the traumatic injury occurred in certain theaters of operation or while serving under orders in support of certain military operations, namely Operation Enduring Freedom and/or Operation Iraqi Freedom, which is no longer applicable. VA is amending 38 CFR 9.20(b)(1)–(3) and (d)(1) to accurately reflect the statutory language.

Administrative Procedure Act

Changes made by this final rule merely reflect current statutory provisions and miscellaneous technical amendments. Therefore, in accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concludes that there is good cause to dispense with public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. The regulatory changes made by this rule pursuant to the Act reflect changes in statute that VA is adopting, without change, into VA's regulations. The regulatory changes do not involve interpretation of any statutory provision. The remaining changes are technical and non-substantive. Consequently, opportunity for public comment is unnecessary. Due to the above considerations, VA is issuing this rule as a final rule, effective immediately upon publication.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

Paperwork Reduction Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Signing Authority

The Acting Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on July 24, 2014 for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: July 25, 2014.

Janet J. Coleman,

Chief, Regulations Development, Tracking, and Control, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

§ 9.2 [Amended]

■ 2. Amend § 9.2(b)(2) by:

■ a. Removing ''1-year period'' and adding in its place ''2-year period'';

■ b. In the last sentence removing ''initial premium'' and adding in its place ''initial Veterans' Group Life Insurance premium''; and

■ c. In the last sentence removing ''termination of duty.'' and adding in its place ''termination of SGLI coverage.''.

§ 9.5 [Amended]

■ 3. Amend § 9.5(d) by removing ''1 year'' and adding in its place ''2 years''.

■ 4. Amend § 9.14 by revising paragraphs (e) and (f) to read as follows:

§ 9.14 Accelerated Benefits.

* * * * *

(e) *How much can you receive as an Accelerated Benefit*? You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage.

(f) *How do you apply for an Accelerated Benefit*? (1) You can obtain an application form by writing the Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, New Jersey 07068–1733; calling the Office of Servicemembers' Group Life Insurance toll-free at 1–800–419–1473; or downloading the form from the Internet at *www.insurance.va.gov.* You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, New Jersey 07068–1733.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

* * * * *

§ 9.20 [Amended]

■ 5. Amend § 9.20 by:

■ a. In paragraph (b)(1) introductory text, removing ''occurring—'', and adding in its place ''occurring on or after October 7, 2001.''.

■ b. Removing paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii).

■ c. Redesignating paragraph (b)(3) as paragraph (b)(2).

■ d. In paragraph (d)(1), removing ''December 1, 2005, and your scheduled loss was a direct result of injuries incurred in Operation Enduring Freedom and Operation Iraqi Freedom.'' and adding in its place ''November 30, 2005.''.

[FR Doc. 2014–17900 Filed 7–30–14; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0400; FRL–9914–44–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Nitrogen Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its proposal to approve revisions to the Texas State Implementation Plan (SIP) for the control of Air Pollution from Nitrogen Compounds. Specifically, we are approving three separate revisions that were submitted to EPA with letters dated April 13, 2012, May 8, 2013, and May 14, 2013, respectively. We are approving these three submittals in accordance with the federal Clean Air Act (the Act, CAA).

DATES: This rule will be effective on September 2, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0400. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar (6PD–L), telephone (214) 665–2164, email *shar.alan@epa.gov.*

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

Outline

I. Background
II. Public Comments
III. Submittals
A. The April 6, 2012 Submittal
B. The May 8, 2013 Submittal
C. The May 14, 2013 Submittal
IV. Final Actions
V. Statutory and Executive Order Reviews

I. Background

On May 23, 2014 (79 FR 29726) we proposed to approve revisions to the Texas SIP that the TCEQ submitted to EPA with three separate letters dated April 6, 2012, May 8, 2013, and May 14, 2013. Details of these three submittals were explained in our proposal, and its corresponding Technical Support Document. A summary of each submittal is described in section III.

II. Public Comments

The public comment period for the May 23, 2013 (79 FR 29726) proposal expired on June 23, 2014, and we did not receive any comments on the proposed action during this period. Therefore, we are approving the May 23, 2013 (79 FR 29726) proposal without changes into the Texas SIP.

III. Submittals

A. The April 6, 2012 Submittal

The April 6, 2012 submittal concerns revisions to 30 TAC, Chapter 117 Control of Air Pollution from Nitrogen Compounds. The revisions to 30 TAC Chapter 117 remove references to the term ''system cap trading'' for utility electric generation sources operating in major ozone nonattainment areas and the East and Central Texas Counties. The revisions concern sections 117.1020, 117.1120, 117.1220, 117.3020, and 117.9800. The intended effect of this removal is that the April 13, 2012, revisions to 30 TAC Chapter 117 and their corresponding provisions of 30

TAC Chapter 101 will become consistent. The revision is administrative in nature. Therefore, we are approving the April 6, 2012 revisions to 30 TAC, Chapter 117 into the Texas SIP.

B. The May 8, 2013 Submittal

The TCEQ submitted revisions to the 30 TAC Chapter 117, Subchapter D, Division 2, Dallas Fort Worth (DFW) Eight-Hour Ozone Nonattainment Area, Minor Sources. The submittal will exempt stationary diesel engines (drawworks engine) that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable EPA's emission standards for non-road engines listed in 40 CFR 89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The drawworks engine is used for lifting and lowering casing into the test well at this plant. The test well is not associated with the actual oil or gas production operations. The revisions specifically concern sections 117.2103, 117.2130, 117.2135, and 117.2145. The TCEQ submitted an 110(l) analysis with its submittal showing why expansion of this partial exemption, in itself, does not adversely impact the status of Texas' progress towards attainment of the 1997 eight-hour ozone standard, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone standard. We found their 110(l) analysis adequate. Therefore, we are approving the May 8, 2013 revisions to 30 TAC, Chapter 117 into the Texas SIP.

C. The May 14, 2013 Submittal

The May 14, 2013, revisions to the 30 TAC Chapter 117 update references to Electric Reliability Council of Texas, Incorporated (ERCOT) definition of ''emergency situation'' and its new Emergency Response Services program. The revision to the definition of ''emergency situation'' in section 117.10(15) will make the 30 TAC Chapter 117 definitions of ''emergency situation'' consistent with the ERCOT's Nodal Protocols Section 2 (Definitions and Acronyms) of June 1, 2012. The changes made by ERCOT are intended to promote electric power reliability during energy emergencies by allowing operation of generators for the purpose of selling power to the electric grid under limited circumstances.

The adopted amendment does not increase the number of sources that could qualify for exemption under the Chapter 117 rules, or increase the frequency or duration of the operation during an emergency situation as compared to the approved SIP. Therefore, the revision is consistent with section 110(l) of the Act, and we are approving the May 14, 2013 revisions to 30 TAC, Chapter 117 into the Texas SIP.

IV. Final Actions

Today, we are approving revisions to 30 TAC, Chapter 117 sections 117.1020, 117.1120, 117.1220, 117.3020, and 117.9800. We are approving revisions to 30 TAC, Chapter 117 sections 117.2103, 117.2130, 117.2135, and 117.2145. We are also approving revisions to 30 TAC, Chapter 117 section 117.10(15). The EPA is approving these revisions in accordance with sections 110 and 172(c) of the federal CAA and as being consistent with the EPA's guidance.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994); and
- this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270, in paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for sections 117.10 under ''Subchapter A''; 117.1020 under ''Subchapter C, Division 1''; 117.1120 under ''Subchapter C, Division 2''; 117.1220 under ''Subchapter C, Division 3''; 117.2103, 117.2130, 117.2135, and 117.2145 under ''Subchapter D, Division 2''; 117.3020 under ''Subchapter E, Division 1''; and, 117.9800 under ''Subchapter H, Division 2'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 117—Control of Air Pollution From Nitrogen Compounds				
Subchapter A—Definitions				
Section 117.10	Definitions	5/14/2013	7/31/2014 [Insert FEDERAL REGISTER citation].	"Emergency situation".
*	*	*	*	*
Subchapter C—Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas				
Division 1—Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources				
*	*	*	*	*
Section 117.1020	System Cap	4/6/2012	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*
Division 2—Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources				
*	*	*	*	*
Section117. 1120	System Cap	4/6/2012	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*
Division 3—Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources				
*	*	*	*	*
Section 117.1220	System Cap	4/6/2012	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*
Subchapter D—Combustion Control at Minor Sources in Ozone Nonattainment Areas				
*	*	*	*	*
Division 2—Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources				
*	*	*	*	*
Section 117.2103	Exemptions	5/8/2013	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*
Section 117.2130	Operating Requirements	5/8/2013	7/31/2014 [Insert FEDERAL REGISTER citation].	
Section 117.2135	Monitoring, Notification, and Testing Requirements.	5/8/2013	7/31/2014 [Insert FEDERAL REGISTER citation].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 117.2145	Recordkeeping and Reporting Requirements.	5/8/2013	7/31/2014 [Insert FEDERAL REGISTER citation].	
Subchapter E—Multi-Region Combustion Control				
Division 1—Utility Electric Generation in East and Central Texas				
*	*	*	*	*
Section 117.3020	System Cap	4/6/2012	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*
Subchapter H—Administrative Provisions				
*	*	*	*	*
Division 2—Compliance Flexibility				
Section 117.9800	Use of Emission Credits for Compliance.	4/6/2012	7/31/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2014–17875 Filed 7–30–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2014–0065; FRL–9911–99–OAR]

RIN 2060–AR80

Protection of Stratospheric Ozone: The 2014 and 2015 Critical Use Exemption from the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is authorizing uses that qualify for the critical use exemption and the amount of methyl bromide that may be produced or imported for those uses for both the 2014 and 2015 control periods. EPA is taking this action under the authority of the Clean Air Act to reflect consensus decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Fourth and Twenty-Fifth Meetings of the Parties. EPA is also amending the regulatory framework to remove provisions related to sale of pre-phaseout inventory for critical uses.

DATES: This rule is effective on July 31, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0065. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation 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 Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Jeremy Arling by telephone at (202) 343–9055, or by email at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar years 2014 and 2015. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is authorizing uses that qualify for the critical use exemption as well as specific amounts of methyl bromide that may be produced and imported for those uses for the 2014 and 2015 control periods.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they

are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states that the provisions of section 553 through 557 of Title 5 shall not, except as expressly provided in section 307, apply to actions to which section 307(d)(1) applies. Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on July 31, 2014. APA section 553(d) allows an effective date less than 30 days after publication for a rule that ''that grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). Since today's action can be considered to either grant an exemption for limited critical uses during 2014 and 2015 from the general prohibition on production or import of methyl bromide after the phaseout date of January 1, 2005, or relieve a restriction that would otherwise prevent production or import of methyl bromide or sale of pre-phaseout inventory for critical uses, EPA is making this action effective immediately upon publication.

Table of Contents

I. General Information
II. What is the critical use Eeemption process?
A. Background of the Process
B. How Does This Rule Relate to Previous Critical Use Exemption Rules?
C. Critical Uses
D. Critical Use Amounts
E. Amending the Critical Stock Allowance Framework
F. Emergency Uses
G. The Criteria in Decisions IX/6 and Ex. I/4
H. Emissions Minimization
III. 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 and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

Entities and categories of entities potentially regulated by this action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2014 and 2015 critical use exemption including growers of vegetable crops, fruits, and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What is the critical use exemption process?

A. Background of the Process

Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties in 1997, the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.'' EPA promulgated these criteria in the definition of ''critical use'' at 40 CFR 82.3. In addition, Decision IX/6 provides that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

EPA requested critical use exemption applications through **Federal Register** notices published on June 14, 2011 (76 FR 34700) (for the 2014 control period) and on May 17, 2012 (77 FR 29341) (for the 2015 control period). Applicants submitted data on their use of methyl bromide, the technical and economic feasibility of using alternatives, ongoing research programs into the use of alternatives in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA).[1] This assessment process culminates in the development of the U.S. critical use nomination (CUN). Annually since 2003, the U.S. Department of State has submitted a CUN to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then take Decisions on critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. EPA then provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On January 31, 2012, the United States submitted the tenth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2014 critical uses. In February 2012, MBTOC sent questions

[1] See CAA section 604(d)(6): ''To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.''

to the United States concerning technical and economic issues in the 2014 nomination. The United States transmitted responses to MBTOC in March, 2012. In May 2012, the MBTOC provided their interim recommendations on the U.S. nomination in the May TEAP Progress Report. In that report, MBTOC posed questions about the U.S. nominations for dried fruit, dried cured ham, and strawberries. The United States responded to those questions in August 2012. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and amounts authorized in this rule reflect the analyses contained in those documents.

On January 24, 2013, the United States submitted the eleventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2015 critical uses. In February and March 2013, MBTOC sent questions to the United States concerning technical and economic issues in the 2015 nomination. The United States transmitted responses to MBTOC in March, 2013. In May 2013, the MBTOC provided its interim recommendations on the U.S. nomination in the May TEAP Progress Report and posed additional questions about the U.S. nominations. The United States responded to those questions in August 2013. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and amounts authorized in this rule reflect the analyses contained in those documents.

B. How does this rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide, to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (February 6, 2006), 71 FR 75386 (December 14, 2006), 72 FR 74118 (December 28, 2007), 74 FR 19878 (April 30, 2009), 75 FR 23167 (May 3, 2010), 76 FR 60737 (September 30, 2011), 77 FR 29218 (May 17, 2012), and 78 FR 43797 (July 22, 2013).

Unlike in previous years, this rule authorizes critical uses for both 2014 and 2015. EPA proposed to do so to expedite the issuance of 2015 allowances. EPA has received repeated comments to previous CUE rules that a failure to issue allowances in a timely fashion places manufacturers and distributors, who need to plan for the upcoming growing season, in a difficult position. For 2013, the final rule was not effective until July 22, 2013, and EPA recognized that this late date could cause difficulties for growers as well as manufacturers and distributors. EPA received one comment supporting the promulgation of CUE rules on a two-year basis. While the commenter urges EPA issue future CUE rules on a two-year basis, the agency is not able to commit to doing so in future and notes that combining two control periods in one rule may result in CUAs being issued for the first control period later than stakeholders would prefer. Given the timing of action by the Parties to the Montreal Protocol on critical uses, EPA is unlikely to be able to add a second control period to a rule without affecting the rule's schedule.

This action continues the approach established in the 2013 rule for determining the amounts of Critical Use Allowances (CUAs) to be allocated for critical uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kilogram (kg) of methyl bromide for an approved critical use during the specified control period. A control period is a calendar year. See 40 CFR 82.3. The two control periods at issue in this rule are 2014 and 2015. Each year's allowances expire at the end of that control period and, as explained in the Framework Rule, are not bankable from one year to the next.

The 2013 Rule also removed from the regulatory framework the restriction that limits the sale of inventory for critical uses through allocations of Critical Stock Allowances (CSA). A CSA was the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period. Under the framework, the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller was prohibited. As discussed in the 2013 Rule, EPA removed the requirement for CSAs because the restriction was less relevant as few critical uses remained and because changes in labeling would make remaining inventory practically inaccessible. This rule removes all of the remaining provisions in 40 CFR part 82 related to critical stock allowances.

C. Critical Uses

In Decision XXIV/5, taken in November 2012, the Parties to the Protocol agreed ''[t]o permit, for the agreed critical-use categories for 2014 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in Decision Ex. I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2014 set forth in table B of the annex to the present decision, which are necessary to satisfy critical uses. . . .'' The following uses are those set forth in table A of the annex to Decision XXIV/5 for the United States:

- Commodities
- Mills and food processing structures
- Cured pork
- Strawberry—field

In Decision XXV/4, taken in October 2013, the Parties to the Protocol agreed ''[t]o permit, for the agreed critical-use categories for 2015 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in Decision Ex. I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2015 set forth in table B of the annex to the present decision, which are necessary to satisfy critical uses. . . .'' The following uses are those set forth in table A of the annex to Decision XXV/4 for the United States:

- Cured pork
- Strawberry—field

EPA is modifying the table of critical uses and critical users in 40 CFR part 82, subpart A, appendix L based on the amounts permitted in Decision XXIV/5 and Decision XXV/4 and the technical analyses contained in the 2014 and 2015 U.S. nominations that assess data submitted by applicants to the CUE program.

EPA sought comment on the technical analyses contained in the U.S. nominations (available for public review in the docket) and information regarding any changes to the registration (including cancellations or registrations), use, or efficacy of alternatives that have occurred after the nominations were submitted. EPA did not receive comments on the technical analyses. EPA did receive comments

related to alternatives, which are discussed in the next section of the preamble. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' may change. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE.

EPA is finalizing the lists of approved critical uses and approved critical users as proposed. For 2014, EPA is removing Georgia growers of cucurbits, eggplants, peppers, and tomatoes. These groups did not submit applications for 2014 and therefore were not included in the 2014 U.S. nomination. EPA is removing sectors or users that applied for a critical use in 2014 but that the United States did not nominate for 2014. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. As a result of this technical review, the United States Government (USG) determined that certain sectors or users did not meet the critical use criteria in Decision IX/6 and the United States therefore did not include them in the 2014 Critical Use Nomination. EPA notified these sectors of their status by letters dated February 7, 2012. These sectors are orchard replant for California wine grape growers and Florida growers of eggplants, peppers, and tomatoes. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Some sectors that were not included in the 2014 Critical Use Nomination submitted supplemental applications for 2014. These sectors are: the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; California strawberry nurseries; stored walnuts; and the U.S. Golf Course Superintendents Association. In addition, some sectors that were not on the list of critical uses for 2013 submitted applications for 2014. These sectors are: California sweet potato growers, Florida strawberry growers, Mardel melon growers, Virginia tomato growers, and Turfgrass Producers International. These sectors were not nominated for 2014. The USG came to a decision that the sectors not nominated for 2014 had not provided rigorous and convincing evidence that they meet the criteria laid out in Decision IX/6, and further that no new problem or large yield/quality loss had been demonstrated that warranted seeking a supplemental exemption from the Parties to the Montreal Protocol.

For 2015 EPA is removing California wine grape growers and Florida growers of eggplants, peppers, tomatoes, and strawberries. These groups did not submit applications for 2015 and therefore were not included in the 2015 U.S. nomination. EPA is also removing sectors or users that applied for a critical use in 2015 but that the United States did not nominate for 2015. As described above EPA conducted a thorough technical assessment of each application and the USG determined that certain sectors or users did not meet the critical use criteria. EPA notified these sectors of their status by letters dated March 26, 2013. These sectors are rice millers, pet food manufacturing facilities, members of the North American Millers Association, and California entities storing walnuts, dried plums, figs, and raisins. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide. In addition, EPA is removing entities storing dates as a critical use for 2015. While the United States nominated this sector for 2015, MBTOC did not recommend that this sector be a critical use in 2015 and the Parties did not permit this use.

EPA has received supplemental applications for 2015 from sectors that the United States did not nominate for 2015. These sectors are: Michigan cucurbit, eggplant, pepper, and tomato growers; Florida eggplant, pepper, tomato, and strawberry growers; the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; the U.S. Golf Course Superintendents Association; and stored walnuts, dried plums, figs, and raisins in California. For those sectors the USG came to a decision that the sectors not nominated have not provided rigorous and convincing evidence that they meet the criteria laid out in Decision IX/6, and further that no new problem or large yield/quality loss had been demonstrated that warranted seeking a supplemental exemption from the Parties to the Montreal Protocol.

Finally, EPA is adding information to Column B of appendix L to clarify which critical uses are approved for which control periods. As stated in previous rules, the ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities refers to instances in which a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

D. Critical Use Amounts

Table A of the annex to Decision XXIV/5 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2014. The maximum amount of new production and import for U.S. critical uses in 2014, specified in Table B of Decision XXIV/5, is 442,337 kg, minus available stocks. This figure is equivalent to 1.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg.

Similarly, Table A of the annex to Decision XXV/4 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2015. The maximum amount of new production and import for U.S. critical uses in 2015, specified in Table B of Decision XXV/4, is 376,900 kg, minus available stocks. This figure is equivalent to 1.5% of the U.S. 1991 methyl bromide consumption baseline.

EPA proposed to determine the level of new production and import for 2014 and 2015 according to the framework and as modified by the 2013 Rule. EPA is using this approach for the final rule. Under this approach, the amount of new production for each control period equals the total amount permitted by the Parties to the Montreal Protocol in their Decisions minus any reductions for available stocks, carryover, and the uptake of alternatives. These terms (available stocks, carryover, and the uptake of alternatives) are discussed in detail below. As established in the 2013 Rule, EPA is not allocating critical stock allowances. Applying this approach, EPA is allocating allowances to exempt 442,337 kg of new production and import of methyl bromide for critical uses in 2014 and 376,900 kg of new production and import for 2015. This is the same amount as the Agency proposed.

EPA received three comments related to the proposed amount of allowances. One comment stated that there should be no exemptions for methyl bromide as it was banned in 2005. While the

commenter is correct that the phaseout occurred in 2005, the Montreal Protocol and the Clean Air Act provide exemptions for critical uses. EPA is taking this action under the authority of the Clean Air Act to reflect consensus decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Fourth and Twenty-Fifth Meetings of the Parties.

A second commenter stated that it is appropriate for EPA to reduce the new production/import allocation to reflect the adoption of methyl bromide alternatives, including specifically dimethyl disulfide. A third commenter supported the proposal to allocate the full amount permitted by the Parties but stated that EPA should allocate more than the amount requested in the CUN to the extent that the nominations were reduced based on the availability of chloropicrin and iodomethane. EPA responds to these comments later in this section under ''Uptake of Alternatives.''

In the past, EPA has also made reductions to the CUA amount to account for the amount specifically permitted for research, on the assumption that research amounts would come from inventory. One commenter stated that EPA failed to account for research use of methyl bromide in the proposed rule and should return to the previously established policy and allocate a separate research purpose allocation. EPA responds that the 2014 and 2015 CUNs did not include, and the Parties did not permit, a separate amount for research, as had been done in prior years. As discussed in more detail in the 2011 CUE final rule (76 FR 60736, 60743, September 30, 2011), EPA views research as part of the nomination for each individual critical use. Therefore, EPA is not making any adjustments for research.

Available Stocks: For 2014 and 2015 the Parties indicated that the United States should use ''available stocks,'' but did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, EPA considered what amount, if any, of the existing stocks may be available to critical users during 2014 and 2015. When EPA issued the proposed rule, the latest data reported to EPA was from December 31, 2012 and showed there were 627,066 kg of existing stocks. New data as of December 31, 2013, show that existing stocks declined to 356,561 kg.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Both Decision XXIV/5 and Decision XXV/4 state that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks. . . .'' In addition, the Decisions recognize that ''parties operating under critical-use exemptions should take into account the extent to which methyl bromide is available in sufficient quantity and quality from existing stocks. . . .'' Earlier Decisions also refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties may determine their level of available stocks. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In the 2013 CUE Rule (78 FR 43797, July 22, 2013), EPA established an approach that considered whether a percentage of the existing inventory was available. In that rule, EPA took comment on whether 0% or 5% of the existing stocks was available. The final rule found that 0% was available to be allocated for critical use in 2013 for a number of reasons including: a pattern of significant underestimation of inventory drawdown; the increasing concentration of critical users in California while inventory remained distributed nationwide; and the recognition that the agency cannot compel distributors to sell inventory to critical users. For further discussion, please see the 2013 CUE Rule. EPA believes these circumstances remain true for 2014 and 2015 and proposed to find 0% of the existing inventory available for 2014 and 2015.

EPA received one comment supporting EPA's determination that 0% of the existing stocks are available for the reasons stated in the proposed rule. The commenter also noted that the manner in which stocks are distributed, to existing customers within their geographic areas, further supports a finding that no stocks are available.

As discussed in the proposed rule, last year EPA removed the restriction that critical stock allowances be expended to sell inventory to critical uses. EPA was unable to calculate the effect this change may have on the remaining inventory and noted that it may be difficult to assess the impact of this change simply from updated inventory data given it went into effect in the middle of the 2013 control period. EPA solicited comments on whether, and how, to draw inferences as to the availability of stocks for critical uses based on inventory figures as of December 31, 2013. EPA did not receive any comments on how to interpret new stocks data in light of the change in policy about CSAs. Therefore, EPA is maintaining its proposed approach and finding that 0% of the existing stocks are available for use by critical users in 2014 and 2015.

Carryover Material: The Parties in paragraph 9 of Decision XXIV/5 ''urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemptions[.]'' EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption from being added to the existing pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this ''carryover'' from the total level of allowable new production and import in the year following the year of the data report. So for example, the amount of carryover from 2012 is factored into the determination for 2014. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material) because this would lead to a double-counting of carryover amounts.

All critical use methyl bromide that companies reported to be produced or imported in 2012 was sold to end users. 759 MT of critical use methyl bromide was produced or imported in 2012. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was from distributors selling material that was carried over from the prior control period. Therefore, EPA proposed to apply a carryover deduction of 0 kg to the new production amount for 2014, consistent with the method used in previous CUE rules, and with the format in Decision XVI/6 for calculating column L of the U.S. Accounting Framework.

Production, import, and sales data for 2013 was not reported to EPA by the time of the proposed rule so EPA assumed 0 kg of carryover. New data reported to EPA show that 562 MT of critical use methyl bromide was produced or imported in 2013. Again, slightly more than the amount produced

or imported was actually sold to end-users. Therefore, EPA is applying a carryover deduction of 0 kg to the new production amount for 2014 and 2015.

All U.S. Accounting Frameworks for critical use methyl bromide, including the one for 2013, are available in the public docket for this rulemaking.

Uptake of Alternatives: EPA considers data on the availability of alternatives that it receives following submission of each nomination to UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered and increased the new production amount when an alternative is withdrawn, but not above the amount permitted by the Parties. One comment stated that the allocation amounts should not impede the continued adoption and use of methyl bromide alternatives. EPA believes that considering the uptake of alternatives encourages the adoption of alternatives.

EPA received one comment that dimethyl disulfide (DMDS) is registered in twenty-seven states and that EPA should reduce the new production/import allocation to reflect the success that growers in many parts of the country have had in transitioning to alternatives, including DMDS. EPA also received one comment supporting the proposal not to make reductions to the allocation due to DMDS as it is not registered in California. That commenter stated that even if California were to register DMDS, growers would transition cautiously to ensure it works for their circumstances.

EPA responds that there has been no change in the registration status of DMDS in California, the only state with a pre-plant CUE for 2014 or 2015. Because DMDS is not available in California it would not be appropriate to reduce the allocation amounts. EPA also does not believe that the progress Florida strawberry growers have made in transitioning to alternatives means, as one commenter suggests, that the EPA should reduce the allocation amounts. EPA recognizes that strawberry growers are successfully transitioning to alternatives, and the CUE allocation for strawberries has been declining as that transition has occurred. EPA considered the transition made to date, and the ability of California strawberry growers to further transition, when developing the nomination. Transition rates for alternatives have already been applied for permitted critical use amounts through the nomination and decision process.

One commenter also stated that EPA should allocate more than the amount requested in the CUN to the extent that the nominations were reduced based on the availability of chloropicrin and iodomethane. The commenter states that the removal of iodomethane from the U.S. market has increased demand for methyl bromide. In addition, the proposed restrictions on the use of chloropicrin in California will increase the need for methyl bromide in that state. EPA responds that the CUNs for 2014 and 2015 did not consider iodomethane as an available alternative because it had already been removed from the market by the time the nominations were submitted. Therefore, EPA does not believe it is appropriate to increase the critical use allocations based on the lack of availability of iodomethane.

The proposed rule requested comment on whether proposed control measures from the California Department of Pesticide Regulation on the use of chloropicrin could affect the 2015 control period. EPA did not adjust the allocations for 2014 or 2015 because the changes were only proposed. One commenter stated that EPA should increase the allocation for 2015 above the proposed amount because the need for methyl bromide will increase if California imposes new restrictions. As EPA stated in the proposed rule, EPA views the determination of the total allocation, up to the amount permitted by the Parties, as an appropriate exercise of discretion. The agency will not increase the quantities allocated beyond those permitted by the Parties, but may exercise its discretion to allocate less. In addition, the critical use exemption program has historically only relied on final actions when determining the availability of alternatives. Since EPA proposed to allocate the full amount permitted by the Parties and California's proposed measures are not final, EPA is not increasing the allocation.

One commenter stated that the proposed rule did not take into account the proposed tolerance revocation of sulfuryl fluoride. As EPA has stated in prior rules, the allocation rule is based on the current status of alternatives. Therefore, EPA has not based the allocation amounts for 2014 or 2015 on any anticipated impacts of that proposal on methyl bromide use.

EPA is not making any other modifications to CUE amounts to account for availability of alternatives. Rates of transition to alternatives have already been applied for permitted 2014 and 2015 critical use amounts through the nomination and decision process.

Allocation Amounts: EPA is allocating to the four companies that hold baseline allowances in proportion to their respective critical use allowances for new production or import of methyl bromide equivalent to 442,337 kg in 2014 and 376,900 kg in 2015. Paragraph 3 of Decision XXIV/5 and paragraph 5 of Decision XXV/4 state that ''parties shall endeavor to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision. . . .'' This is similar to language in prior Decisions authorizing critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The proposed Framework Rule contained several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), and because of the limited number of permitted uses, the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

E. Amending the Critical Stock Allowance Framework

The 2013 Rule removed the provisions at § 82.4(p)(ii) and (iii) requiring the use of critical stock allowances for sales of inventory to critical users. In addition, EPA made some necessary conforming changes to 40 CFR part 82, which follow from removing those restrictions. As a result of the changes in the 2013 CUE Rule, there are no restrictions under the Clean Air Act on the sale of pre-phaseout material to critical users.

EPA took comment in the proposed rule on removing all of the remaining references to critical stock allowances in 40 CFR part 82. EPA believes these provisions are no longer necessary if the agency is not allocating separate critical stock allowances. EPA received one comment in support of removing those provisions, as it would avoid confusion in the future. EPA is finalizing the rule as proposed. Specifically, EPA is removing the definitions of ''critical stock allowance,'' ''critical stock allowance holder,'' and ''unexpended

critical stock allowance'' from § 82.3. EPA is removing provisions related to the intercompany transfer of critical stock allowances at § 82.12(a) [2] and the exchange of critical use allowances for critical stock allowances at § 82.12(e). EPA is also removing the reporting and recordkeeping requirements related to critical stock allowances in § 82.13(f)(3) and (g)(4). EPA notes that the agency is maintaining the requirement to annually report remaining pre-phaseout inventory.

F. Emergency Uses

In 2013 EPA held discussions with USDA and the Department of State on tools that could potentially address immediate and unforeseen needs for methyl bromide including whether emergency situations may arise that warrant the use of methyl bromide consistent with the treaty, recognizing that emergency uses are not intended as a replacement for CUE uses. In August, EPA held a stakeholder meeting to present, among other things, the findings of those discussions and noted that the three agencies had not yet identified any specific situations that could not be addressed by current mechanisms. The mechanisms discussed include, among others: The continuing critical use exemption process, including the supplemental application process which allows for a second opportunity to review applications from growers with a critical need; the pre-phaseout inventory (if remaining); the emergency use exemption under Section 18 of FIFRA; and ongoing targeted research and outreach to develop and implement alternatives to methyl bromide. The U.S. government is committed to using flexibility in the Protocol's existing mechanisms as an avenue to address changes in national circumstances that affect the transition to alternatives.

EPA solicited comments on specific emergency situations that may necessitate the use of methyl bromide, consistent with the requirements of the Montreal Protocol, and which could be difficult to address using current tools and authorities. EPA received one comment which discussed ''hand-held probe'' treatments for outbreaks of Oak Root Fungus (*Armillaria*) in fruit and nut orchards. The commenter states that the use is limited in scope, methyl bromide is the only treatment proven to have long term efficacy, and the treatment is critical to the viability of infested orchards. The commenter stated that as a threshold matter, there must be clear and objective criteria to establish the existence of an emergency situation and the basis for approval. In addition the process to meet a particular emergency must be efficient so as to enable all stakeholders to meet the need before the emergency has caused significant damage.

Clear and objective criteria would be required to establish the existence of an emergency situation and the basis for approval. Decision IX/7 states that the Secretariat and the TEAP will evaluate the use according to the critical use criteria in IX/6. Therefore, at a minimum, any potential emergency use must also be able to qualify as a critical use. The example of *Armillaria* raised by the commenter was also included in an application for a critical use exemption in 2016. The U.S. Government did not include this as part of the 2016 U.S. Nomination because the application did not provide data to demonstrate either the efficacy of methyl bromide or that the alternatives are not effective. Nor did it include data showing that the loss of methyl bromide would create a significant market disruption. EPA will continue in interactions with stakeholders and other agencies to receive information on understanding emergency situations that may necessitate the use of methyl bromide.

G. The Criteria in Decisions IX/6 and Ex. I/4

Decision XXIV/5 and Decision XXV/4 call on Parties to apply the conditions set forth in Decision Ex. I/4 (to the extent applicable) and the criteria in Decision IX/6 paragraph 1 to exempted critical uses for the 2014 and 2015 control periods. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections II.A., and II.C. of this preamble. EPA solicited comments on the technical and economic basis for determining that the uses listed in this rule meet the criteria of the critical use exemption. The CUNs detail how each critical use meets the criteria in paragraph 1 of Decision IX/6, apart from the criterion located at paragraph (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6 paragraph (1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section II.D. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6 paragraph (1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption. EPA refers readers to the preamble to the 2006 CUE rule (71 FR 5989, February 6, 2006) as well as to the memo in the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration. As explained in those documents, EPA's interpretation of this term has several dimensions, including looking at potential effects on both demand and supply for a commodity, evaluating potential losses at both an individual level and at an aggregate level, and evaluating potential losses in both relative and absolute terms.

The remaining considerations are addressed in the nomination documents including: the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4 paragraphs 5 and 6 that Parties consider and implement MBTOC recommendations, where feasible, on actions a Party may take to reduce the critical uses of methyl bromide and include information on the methodology they use to determine economic feasibility.

Some of these criteria are evaluated in other documents. The United States has considered the adoption of alternatives and research into methyl bromide alternatives (see Decision IX/6 paragraph (1)(b)(iii)) in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009. The National Management Strategy addresses all of the aims specified in Decision Ex. I/4 paragraph 3 to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide in order to conduct the research required by Decision IX/6. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As discussed in the preamble to the 2010 CUE rule (75 FR 23179, May 3, 2010), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-

[2] This provision allows any critical stock allowance holder (''transferor'') to transfer critical stock allowances to any critical stock allowance holder or any methyl bromide producer, importer, distributor, or third party applicator (''transferee'').

phaseout inventory. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

H. Emissions Minimization

Previous Decisions of the Parties have stated that critical users shall employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2009 Reregistration Eligibility Decision (RED) [3] for methyl bromide, available in the docket to this rulemaking, which is implemented through restrictions on how methyl bromide products can be used. This approach means that methyl bromide labels require that treated sites be tarped, except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film, by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) and the National Institute for Food and Agriculture (USDA–NIFA) to promote emission reduction techniques. The federal government has invested substantial resources into developing and implementing best practices for methyl bromide use, including emission reduction practices. The Cooperative Extension System, which receives some support from USDA–NIFA provides locally appropriate and project-focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: *http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=308* and *http://www.csrees.usda.gov/fo/methylbromideicgp.cfm.*

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide. EPA also encourages researchers and users who are using techniques to minimize emissions of methyl bromide to inform EPA of their experiences and to provide information on such techniques with their critical use applications.

III. 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 (EO) 12866 (58 FR 51735, October 4, 1993), this final rule is a ''significant regulatory action'' because it was deemed to 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) and any changes made in response to interagency recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings. This rule does remove requirements related to the recordkeeping and reporting of critical stock allowances which would decrease the information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (see Table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming	$0.75 million.
	1113—Fruit and Nut Tree Farming.	
	1114—Greenhouse, Nursery, and Floriculture Production.	
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning)	$7 million.
	311211—Flour Milling	500 employees.
	311212—Rice Milling	500 employees.
	493110—General Warehousing and Storage	$25.5 million.
	493130—Farm Product Warehousing and Storage	$25.5 million.
Distributors and Applicators.	115112—Soil Preparation, Planting and Cultivating	$7 million.

[3] Additional information on risk mitigation measures for soil fumigants is available at *http://epa.gov/pesticides/reregistration/soil_fumigants/*

Category	NAICS code	NAICS Small business size standard (in number of employees or millions of dollars)
Producers and Importers.	325320—Pesticide and Other Agricultural Chemical Manufacturing	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for the critical use exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. 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 analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). 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 a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule allows the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action confers a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the deregulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). We have therefore concluded that this rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. 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.

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 rule is expected to affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicited additional comment on this action from tribal officials.

G. Executive Order No. 13045: Protection of Children From Environmental Health 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. This rule affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the United States. Populations that work or live near fields or other application sites may benefit from the reduced amount of methyl bromide applied, as compared to amounts allowed under previous critical use exemption rules.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 31, 2014.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: July 18, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

§ 82.3 [Amended]

■ 2. Amend § 82.3 by removing the definitions of ''Critical stock allowance (CSA)'', ''Critical stock allowance (CSA) holder'', and ''Unexpended critical stock allowance (CSA)''.

■ 3. Amend § 82.8 by revising the table in paragraph (c)(1) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2014 Critical use allowances for pre-plant uses* (kilograms)	2014 Critical use allowances for post-harvest uses* (kilograms)	2015 Critical use allowances for pre-plant uses* (kilograms)	2015 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	252,236	16,572	227,073	1,969
Albemarle Corp	103,725	6,815	93,378	810
ICL–IP America	57,321	3,766	51,602	447
TriCal, Inc	1,785	117	1,607	14
Total	*415,067*	*27,270*	*373,660*	*3,240*

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart for the appropriate control period.

* * * * *

■ 4. Amend § 82.12 by revising paragraph (a)(1) introductory text and removing paragraph (e) to read as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

(a) *Inter-company transfers.* (1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances. After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) (''transferor'') may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder (''transferor'') may transfer critical use allowances to any other person (''transferee'').

* * * * *

■ 5. Amend § 82.13 by:

■ a. Revising paragraphs (f)(3)(iv) and (g)(4)(vii); and

■ b. Removing and reserving paragraphs (bb)(2)(iv) and (cc)(2)(iv).

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(f) * * *

(3) * * *

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, critical use allowances (pre-plant), critical use allowances (post-harvest), and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

* * * * *

(g) * * *

(4) * * *

(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter and the total sum of expended and unexpended critical use allowances (pre-plant) and unexpended critical use allowances (post-harvest);

* * * * *

■ 6. Amend subpart A by revising appendix L to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2014 and 2015 Control Periods

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User, Location of Use, and Control Period.	Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation.
PRE-PLANT USES:		
Strawberry Fruit	California growers. Control periods 2014 and 2015	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
POST-HARVEST USES:		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers' Association. Control period 2014.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. Control period 2014.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion.
	(c) Members of the North American Millers' Association in the U.S. Control period 2014.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion.
Commodities	California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California. Control period 2014.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products.	Members of the National Country Ham Association and the American Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney of Smithfield Inc. Control periods 2014 and 2015.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermestid beetle infestation. Ham mite infestation.

[FR Doc. 2014–17595 Filed 7–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 12–267; FCC 13–111]

Comprehensive Review of Licensing and Operating Rules for Satellite Services.

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of February 12, 2014, a document concerning revisions in the Commission's rules. The document inadvertently failed to include an amendatory instruction. This document corrects the omission of that instruction.

DATES: The final rule published February 12, 2014, at 79 FR 8308, contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of the rule, this correction, and all other rules adopted by FCC 13–111 after receiving approval from the OMB for the information collection requirements contained in the rulemaking.

FOR FURTHER INFORMATION CONTACT: Cindy Spiers, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554, at (202) 418–1593 or via email at *Cindy.Spiers@fcc.gov.*

SUPPLEMENTARY INFORMATION: On February 12, 2014, at 79 FR 8308, a document inadvertently failed to include an instruction to revise the introductory text of paragraph (b) in section 25.140. This document corrects the omission of that instruction.

In FR Doc. 2014–02213 79 FR 8308, February 12, 2014, the following correction is made:

§ 25.140 [Corrected]

■ On page 8319, in the third column, instruction c in paragraph 19, ''Remove and reserve paragraphs(b)(1) and (2)'', is corrected to read ''Revise paragraph (b) introductory text to read as follows and remove and reserve paragraphs(b)(1) and (2)''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–17962 Filed 7–30–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, and 232

RIN 0750–AI13

Defense Federal Acquisition Regulation Supplement: Application of Certain Clauses to Acquisitions of Commercial Items (DFARS Case 2013–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the applicability of two clauses to acquisitions of commercial items.

DATES: Effective July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 78 FR 73472 on December 6, 2013, to clarify the applicability of DFARS 252.211–7008, Use of Government-Assigned Serial Numbers, and DFARS 252.232–7006, Wide Area WorkFlow Payment Instructions, to acquisitions of commercial items. The rule proposed adding these two clauses to the list at DFARS 212.301(f) of solicitation provisions and contract clauses for the acquisition of commercial items and revising the clause prescriptions to require their inclusion in solicitations and contracts for acquisitions using FAR part 12 procedures. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. There are no changes from the proposed rule in the final rule, except renumbering at 212.301 due to DFARS baseline changes. A discussion of the comment is provided, as follows:

Comment: The respondent stated that the rule appears to be a cost cutting measure that will reduce exploitation of tax monies being used to purchase products for the Government at an inflated rate.

Response: The rule clarifies the applicability of DFARS 252.211–7008 and 252.232–7006 to acquisitions of commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This rule revises DFARS part 212, Acquisition of Commercial Items, to clarify the applicability of DFARS 252.211–7008, Use of Government-Assigned Serial Numbers, and DFARS 252.232–7006, Wide Area WorkFlow Payment Instructions, to acquisitions of commercial items.

This final rule applies to contractors, regardless of size or business ownership, when responding to DoD solicitations or being awarded contracts that are acquired utilizing FAR part 12 procedures. The rule is not expected to have a significant impact on small entities as it merely clarifies the use of two DFARS clauses. The final rule is expected to have a slightly positive impact because the additional clarity will help contracting officers and small businesses better understand DoD's requirements.

No public comments were received in response to the initial regulatory flexibility analysis. The rule does not contain any reporting or recordkeeping requirements and does not require contractors to expend significant cost or effort. There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 211, 212, and 232

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 212, and 232 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 212, and 232 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. In section 211.274–6, paragraph (c) introductory text is revised to read as follows:

211.274–6 Contract clauses.

* * * * *

(c) Use the clause at 252.211–7008, Use of Government-Assigned Serial Numbers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301 by—

■ a. Redesignating—

■ i. Paragraphs (f)(1ii) through (lxx) as (f)(liv) through (lxxii);

■ ii. Paragraphs (f)(xv) through (li) as (f)(xvi) through (lii); and

■ b. Adding new paragraphs (f)(xv) and (liii).

■ The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xv) Use the clause at 252.211–7008, Use of Government-Assigned Serial Numbers, as prescribed in 211.274–6(c).

* * * * *

(liii) Use the clause at 252.232 -7006, Wide Area WorkFlow Payment Instructions, as prescribed in 232.7004(b).

* * * * *

PART 232—CONTRACT FINANCING

■ 4. In section 232.7004, revise the section heading and paragraph (b) to read as follows:

232.7004 Contract clauses.

* * * * *

(b) Use the clause at 252.232–7006, Wide Area WorkFlow Payment Instructions, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when 252.232–7003 is used and neither 232.7003(b) nor (c) apply. See PGI 232.7004 for instructions on completing the clause.

[FR Doc. 2014–17941 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AI11

Defense Federal Acquisition Regulation Supplement: Domestically Nonavailable Articles—Elimination of DoD-Unique List (DFARS Case 2013–D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the DoD-unique list of domestically nonavailable articles because these items have been found to be either available domestically or are not used by DoD.

DATES: Effective July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 78 FR 73474 on December 6, 2013, to remove section 225.104 in its entirety because the articles currently listed no longer qualify as an exception to the Buy American statute (41 U.S.C. 8302(a)), on the basis of their nonavailability. The two items listed at section 225.104 that are being removed have been found to be either (1) available from domestic producers in the case of aluminum clad steel wire, or (2) DoD does not use the item in the case of the sperm-whale oil. Two public comments were submitted in response to the proposed rule.

II. Discussion and Analysis

No changes are being made to the final rule as a result of the two public comments. The first respondent stated support for the rule and the second respondent noted that there should be no change to the rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows.

This final rule amends the Defense Acquisition Regulation Supplement (DFARS) by removing the DoD-unique list of domestically nonavailable articles that have been found to be either available domestically or are not used by DoD. Of the two items on the list, aluminum-clad steel is produced and available in the United States, and DoD does not use sperm-whale oil.

This rule will not have an impact on small entities as it merely removes from the DFARS a listing of an item that is now domestically available and an item that is not used by DoD. The removal of the nonavailability exception to the Buy American statute for aluminum-clad steel wire will neither increase nor decrease small businesses' participation in future procurements, particularly with regard to set-asides under the Small Business Program. This conclusion is primarily attributed to the application of the nonmanufacturer rule. Under the nonmanufacturer rule, any small business concern proposing to furnish a product that it did not itself manufacture must furnish the product of a domestic small business manufacturer. However, in industries where the Small Business Administration (SBA) has determined there are no domestic small business manufacturers, SBA may issue a waiver to the nonmanufacturer rule to permit small businesses to provide any firm's product (see FAR 19.102(f)(7). Reinstatement of the Buy American statute restrictions has no effect on the application of the nonmanufacturer rule. With respect to the procurement of sperm-whale oil, DoD does not use this product in any application. As such, a discussion of future procurement opportunities for this substance is no longer relevant.

No comments were received from the public in response to the initial regulatory flexibility analysis. This rule does not add any new information collection, reporting, or record keeping requirements. No alternatives were identified that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.104 [Removed]

■ 2. Remove section 225.104.

[FR Doc. 2014–17940 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 236

RIN 0750–AI33

Defense Federal Acquisition Regulation Supplement: Use of Military Construction Funds in Countries Bordering the Arabian Sea (DFARS Case 2014–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the

Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014, that restricts use of military construction funds in various countries, including countries bordering the Arabian Sea.

DATES: Effective July 31, 2014.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 29, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014–D016, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2014–D016'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2014–D016.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2014–D016'' on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2014–D016 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1997, sections 111 and 112 of the annual military construction appropriations acts restrict use of military construction funds for acquisitions exceeding certain dollar thresholds of architect-engineer services and military construction contracts to be performed in certain foreign countries. With some exceptions, these restrictions require award to a U.S. firm or provide a preference for award to a U.S, firm.

These restrictions were first implemented as an interim rule in the DFARS under DFARS Case 1997–D307 (63 FR 11526) on March 9, 1998.

II. Discussion and Analysis

This interim rule revises the DFARS to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76). The only change required is to apply the restriction to contracts to be performed in the countries bordering the Arabian Sea (rather than the Arabian Gulf). These countries are India, Iran, Oman, Pakistan, Somalia, and Yemen.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it applies to a very limited number of small entities. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is necessary to implement the restrictions on award to other than U.S. firms when awarding certain military construction and architect-engineer contracts to be performed in countries bordering the Arabian Sea.

The objective of this rule is to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76). This rule revises the preference for award to U.S. firms of military construction contracts that have an estimated value greater than $1,000,000 and the restriction requiring award only to U.S. firms for architect-engineer contracts that have an estimated value greater than $500,000, to make it applicable to contracts to be performed in a country bordering the Arabian Sea, rather than a country bordering the Arabian Gulf (as required in earlier statutes).

This will only apply to a very limited number of small entities—those entities that submit offers in response to solicitations for military construction contracts that have an estimated value greater than $1,000,000 and architect-engineer contracts that have an estimated value greater than $500,000, when the contracts are to be performed in countries bordering the Arabian Sea.

There is a DFARS provision that requires for offerors to represent whether they are a U.S. firm. This rule impacts the prescription for applicability of that provision (changing Arabian Gulf to Arabian Sea).

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule does not impose any significant economic burden on small firms. The offeror must represent if it is a U.S. firm, but in return for a positive representation is granted a preference for award of the contract. DoD did not identify any alternatives that could reduce the burden and still meet the objectives of the rule.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014–D016), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply, however, the rule does not impose any new information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0255, Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts. The rule modifies the prescription for use of the provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, in an amount of less than 8 hours. Any change in the burden hours due to the changed prescription will be negligible.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist

to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76). Delay in making this change to the DFARS may result in (1) the appropriations act restrictions being incorrectly applied to military construction and architect-engineer contracts to be performed in countries bordering the Arabian Gulf and (2) possible misuse of appropriated funds if DoD fails to provide appropriate preference for U.S. firms when performing such contracts in the countries bordering the Arabian Sea. Issuance as an interim rule is necessary to ensure immediate preference for U.S. firms when awarding construction contracts to be performed in countries bordering the Arabian Sea, in order to comply with the law and support the U.S. industrial base.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.''

List of Subjects in 48 CFR Parts 225 and 236

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 236 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 236 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.7014 [Amended]

■ 2. In section 225.7014, amend paragraph (a) by removing ''Arabian Gulf'' and adding ''Arabian Sea'' in its place.

225.7015 [Amended]

■ 3. Amend section 225.7015 by removing ''Arabian Gulf'' and adding ''Arabian Sea'' in its place.

PART 236—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

■ 4. In section 236.273, revise paragraph (a) introductory text to read as follows:

236.273 Construction in foreign countries.

(a) In accordance with section 112 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76) and similar sections in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed $1,000,000 and are to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Sea (i.e., India, Iran, Oman, Pakistan, Somalia, and Yemen)], shall be awarded only to United States firms, unless—

* * * * *

236.570 [Amended]

■ 5. In section 236.570, amend paragraph (c)(1) by removing ''Arabian Gulf'' and adding ''Arabian Sea'' in its place.

■ 6. Revise section 236.602–70 to read as follows:

236.602–70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with section 111 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76) and similar sections in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Sea (i.e., India, Iran, Oman, Pakistan, Somalia, and Yemen), shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

236.609–70 [Amended]

■ 7. In section 236.609–70, amend paragraph (b)(3), by removing ''Arabian Gulf'' and adding ''Arabian Sea'' in its place.

[FR Doc. 2014–17942 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No.: 140226179–4179–01]

RIN 0648–BE02

Administrative Updates to Papahānaumokuākea Marine National Monument Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Direct final rule.

SUMMARY: This final rule makes administrative and procedural changes to the applicable regulations with corrected addresses and fax numbers because the offices of Papahānaumokuākea Marine National Monument have moved.

DATES: These regulations are effective on July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Tia Brown, Office of National Marine Sanctuaries, NOAA Inouye Regional Center, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818. Phone: 808–725–5805. Email: *Tia.Brown@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access: This **Federal Register** document is also accessible via the Internet at *http://www.gpoaccess.gov/fr/index.html.*

I. Summary of Rulemaking

NOAA and USFWS are amending ONMS regulations (50 CFR part 404) to reflect the recent change in address and phone numbers for the Papahānaumokuākea Marine National Monument for general questions and inquiries, permit application processing and vessel reporting requirements. The old address currently appears in section 404.11(b) under ''Permitting procedures and criteria.'' The old address will be replaced with ''NOAA/Inouye Regional Center; NOS/ONMS/PMNM/Attn: Permit Coordinator; 1845 Wasp Blvd., Building 176; Honolulu, HI 96818.''

In addition, the local Hawai'i based phone number for vessel notifications, 808–395–6944, will be removed from the regulations. The toll-free phone number 1–866–478–6944 will remain

active. The fax number listed for the ship reporting system will be changed to 1–808–455–3093.

NOAA is also updating the title of the regulations, to reflect the current name of the monument, based on Presidential Proclamation 8112. The name in the regulation will be changed from ''Northwestern Hawaiian Islands Marine National Monument'' as it currently reads in the regulations to ''Papahānaumokuākea Marine National Monument.''

II. Classifications

A. Administrative Procedures Act

This rule pertains solely to the organization and correction of existing rules and related administrative changes necessitated by the office relocation of the Papahānaumokuākea Marine National Monument. It makes no changes to the substantive legal rights, obligations, or interests of affected parties. This rule therefore is a ''rule of agency organization, procedure or practice'' and is therefore exempt from the notice-and-comment requirements of 5 U.S.C. 553 under 5 U.S.C. 553(b)(A).

B. National Environmental Policy Act

The amendments to the regulations identified in this document do not have significant environmental impacts and are categorically excluded from the need to prepare an environmental assessment pursuant to the National Environmental Policy Act. Specifically, the changes to update codified addresses are administrative in nature, and are thus categorically excluded by NOAA Administrative Order 216–6 Section 6.03c.3(i).

C. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Paperwork Reduction Act

This rule does not contain any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0548) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

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.

F. Regulatory Flexibility Act

This regulation is exempt from the notice and comment provisions of the Administrative Procedures Act (APA), 5 U.S.C. 553. Therefore, the requirements of the Regulatory Flexibility Act do not apply, 5 U.S.C. 603(a). No other rule requires a regulatory flexibility analysis and none has been prepared.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources, Permits, Recreation and recreation areas, Research, Water pollution control, Water resources, Wildlife, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Holly A. Bamford,

Assistant Administrator, National Ocean Service.

Dated: July 24, 2014.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

Accordingly, for the reasons set forth above, 50 CFR part 404 is amended as follows:

PART 404—PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT

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

Authority: 16 U.S.C. 431 *et seq.;* 16 U.S.C. 460k–3; 16. U.S.C. 1801 *et seq.;* 16 U.S.C. 742f, 16 U.S.C. 742*l,* and 16 U.S.C. 668dd–ee; 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.,* Pub. L. 106–513, § 6(g) (2000).

■ 2. Revise the heading for part 404 to read as set forth above.

■ 3. Amend § 404.4 by revising paragraph (f)(1)(iii) to read as follows:

§ 404.4 Access to Monument.

* * * * *

(f) * * *

(1) * * *

(iii) *Fax:* 1–808–455–3093

* * * * *

■ 4. Amend § 404.11 by revising paragraph (b) to read as follows:

§ 404.11 Permitting procedures and criteria.

* * * * *

(b) *Application requirements.* Applicants for permits under this section shall submit applications to: NOAA/Inouye Regional Center; NOS/ONMS/PMNM/Attn: Permit Coordinator; 1845 Wasp Blvd., Building 176; Honolulu, HI 96818.

* * * * *

■ 5. Amend Appendix E to Part 404, by revising paragraphs E.2 and E.3 to read as follows:

Appendix E to Part 404—Content and Syntax for Papahānaumokuākea Ship Reporting System

* * * * *

E.2 Prior Notification of Entry Format

Vessels of the United States less than 300 gross tonnage that are not equipped with onboard email capability must provide the following notification of entry at least 72 hrs, but no longer than 1 month, prior to entry date, utilizing the data syntax described above. Notification may be made via the following communication methods, listed in order of preference: Email [*nwhi.notifications@noaa.gov*]; fax [1–808–455–3093]; telephone [1–866–478–NWHI (6944)].

* * * * *

E.3 Exit Notification Format

Immediately upon leaving the Reporting Area, vessels required to participate must provide the following information. Vessels of the United States less than 300 gross tonnage that are not equipped with onboard email capability must provide the following Exit Notification information within 12 hrs of leaving the Reporting Area. Notification may be made via the following communication methods, listed in order of preference: Email [*nwhi.notifications@noaa.gov*]; fax [1–808–455–3093]; telephone [1–866–478–NWHI (6944)].

* * * * *

[FR Doc. 2014–18005 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–NK–P

Proposed Rules

Federal Register

Vol. 79, No. 147

Thursday, July 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2013–0269]

RIN 3150–AJ30

List of Approved Spent Fuel Storage Casks: Transnuclear, Inc. NUHOMS® HD Cask System, Certificate of Compliance No. 1030, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Transnuclear, Inc. NUHOMS® HD Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1030.

DATES: Submit comments by September 2, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one 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–2013–0269. Address questions about NRC dockets to Carol Gallagher, telephone: 301–287–3422, email: *Carol.Gallagher@nrc.gov.* For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- 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: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2013–0269 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–2013–0269.
- 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 (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. The proposed CoC, proposed Technical Specifications (TSs), and preliminary Safety Evaluation Report (SER) are available in ADAMS under Package Accession No. ML13322B445.
- 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–2013–0269 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 in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC posts 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. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 2 to CoC No. 1030 and does not include other aspects of the Transnuclear, Inc. NUHOMS® HD Cask System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on October 14, 2014. However, if the NRC receives significant adverse comments on this proposed rule by September 2, 2014, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed

revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

The NRC is proposing to amend its spent fuel storage regulations by revising the Transnuclear, Inc. NUHOMS® HD Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to CoC No. 1030. Amendment No. 2 includes changes to: increase the soluble boron concentration to 2,800 ppm for criticality safety analyses and add maximum enrichments for Combustion Engineering 14 × 14 fuel assemblies that were previously unauthorized for storage; improve clarity of certain TSs, such as heat load zoning configuration, fuel qualification table, fuel class, and intact fuel/damaged fuel definitions; allow for increased fuel assembly weight by 25 pounds; revise the definition of control components; include blended low enriched uranium fuel material; increase shielding effectiveness of the horizontal storage module by adding optional dose reduction hardware; update licensing basis documents based on recent experience with ongoing licensing actions involving other NUHOMS® systems; and accommodate installation practices for a limiting gap size that was evaluated based on dose rates. In addition, the amendment makes editorial changes to the TSs.

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 11, 2006 (71 FR 71463), that approved the NUHOMS® HD Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1030.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has 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 clarity and effectiveness of the language used.

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; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

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 is revised 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 secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy 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 1030 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1030.

Initial Certificate Effective Date: January 10, 2007.

Amendment Number 1 Effective Date: March 29, 2011.

Amendment Number 2 Effective Date: October 14, 2014.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1030.

Certificate Expiration Date: January 10, 2027.

Model Number: NUHOMS® HD -32PTH.

* * * * *

Dated at Rockville, Maryland, this 23rd day of July, 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–18082 Filed 7–30–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Interest in Restructure of Rotorcraft Airworthiness Standards

ACTION: Notice of Disposition of Comments.

SUMMARY: This notice disposes of public comments received by the Federal Aviation Administration (FAA) in response to a **Federal Register** notice published on February 22, 2013, requesting comments on a potential restructuring of the rotorcraft airworthiness standards of Title 14 of the Code of Federal Regulations (14 CFR) parts 27 (normal category rotorcraft) and 29 (transport category rotorcraft). Specifically, the agency sought comments on the necessity of updates to parts 27 and 29, including whether to change the existing weight- and seat-based applicability standards for normal and transport rotorcraft. Based on the comments received, the FAA is terminating this docket. Commenters indicated a substantial interest in revising or restructuring the certification standards for parts 27 and 29, and the FAA's Rotorcraft Directorate will begin establishing the appropriate forums to involve interested parties.

DATES: The docket is terminated as of July 31, 2014.

ADDRESSES: FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 2601 Meacham Blvd., Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; facsimile (817) 222–5961. The primary contacts are: John VanHoudt (telephone: 817–222–5167, email: *john.vanhoudt@faa.gov*) or ASW–111 Manager Jorge R. Castillo (telephone: 817–222–5110, email: *jorge.r.castillo@faa.gov*).

SUPPLEMENTARY INFORMATION:

Background and Discussion

Currently, rotorcraft with a maximum weight of 7,000 pounds or less and nine passenger seats or less are certificated as normal category rotorcraft under part 27; rotorcraft with a maximum weight greater than 7,000 pounds or with 10 or more passenger seats are certificated as transport category rotorcraft under part 29.

The FAA and rotorcraft industry have discussed potential revisions to the ''applicability'' rules for rotorcraft certificated under parts 27 and 29 since the early 1990s. In February 1994, the FAA held a public meeting to determine a course of action in the best interest of the public and the aviation community. An Aviation Rulemaking Advisory Committee working group was established with representatives from the FAA, the Joint Aviation Authorities, and Transport Canada Civil Aviation, as well as from U.S. and European helicopter manufacturers. In February 1995, the committee established the Rotorcraft Gross Weight and Passenger Issues Working Group, and tasked the group with recommending new or revised requirements for increasing the gross weight and passenger limitations for normal category rotorcraft. There was agreement within the group to increase the gross weight limitation of part 27 from 6,000 to 7,000 pounds with added passenger safety requirements. The FAA implemented this regulatory change in a 1999 final rule (64 FR 45092, August 18, 1999).

We continue to recognize that the evolution of parts 27 and 29 has not kept pace with technology and the capability of rotorcraft produced currently. The FAA is therefore interested in investigating new approaches that would make the rotorcraft airworthiness regulations more efficient and adaptable to future technology. Additionally, the FAA has found that, without a rulemaking effort to extensively revise the rotorcraft standards, we are left with the option of issuing multiple special conditions for the same technologies.

The FAA published a **Federal Register** notice on February 22, 2013 (78 FR 12254), requesting comments on ''Interest in Restructure of Rotorcraft Airworthiness Standards.'' Specifically, we requested comment on (1) to what extent commenters believed the certification standards need to be changed in order to remain relevant; (2) whether the current standards need to be completely changed, as opposed to more targeted changes; (3) whether the applicability rules should be changed from weight- and passenger-based standards, and, if so, how; and (4) commenters' willingness to participate in a rulemaking committee. We received 48 comments to the docket number FAA–2013–0144.

Comments Summary

Of the 48 comments received, the majority were from operators and their affiliates. There were also comments from another civil aviation authority (Transport Canada Civil Aviation); various rotorcraft-affiliated organizations (including the Aerospace Industries Association, the American Helicopter Society International, the Association of Air Medical Services, the General Aviation Manufacturers Association, and Helicopter Association International); vendors and manufacturers (including Bell Helicopter, Eurocopter, and Marenco Swisshelicopter); and others. These comments indicated a substantial interest in favor of some form of revision or restructure of the rotorcraft design certification standards in parts 27 and 29 and expressed that the current regulatory scheme is outdated by technology and impedes the development of new rotorcraft models. Only three commenters stated the weight and passenger thresholds of the current regulations should remain unchanged. Most commenters recommended that the FAA approach this effort in a deliberate and methodical manner, including forming a group in coordination with industry to evaluate parts 27 and 29 and provide recommendations to the FAA prior to initiating a formal rulemaking action. Commenters also expressed a need to coordinate this effort with other civil aviation authorities. Additionally, many commenters expressed interest in participating in the process of updating the regulations.

Termination of This Docket and Future Agency Action

Based on these comments, the FAA has determined that there is sufficient interest in the rotorcraft community to pursue further collaboration towards possible revisions to parts 27 and 29. The FAA is therefore terminating this docket. The Rotorcraft Directorate will begin establishing the appropriate forum(s) and involving interested

parties. The FAA will also reach out to our bilateral partners (i.e., Transport Canada Civil Aviation and the European Aviation Safety Agency) and invite their participation in this effort. Parties interested in this initiative may look forward to future public announcements on upcoming developments.

Issued in Fort Worth, TX, on July 10, 2014.

Kimberly K. Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–16999 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No.FAA–2014–0376; Notice No. 33–14–01–SC]

Special Conditions: SNECMA, Silvercrest-2 SC–2D; Rated 10-Minute One Engine Inoperative Takeoff Thrust at High Ambient Temperature

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the SNECMA, Silvercrest-2 SC–2D engine model. This engine will have a novel or unusual design feature—an additional takeoff rating that increases the exhaust gas temperature (EGT) limit to maintain takeoff thrust in certain high ambient temperature conditions with one engine inoperative (OEI) for a maximum of 10 minutes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The 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 September 2, 2014.

ADDRESSES: Send comments identified by docket number [FAA–2014–0376] 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 of 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 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Docket Operations will post all comments it receives, without change, to *http://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: You may read background documents or comments received 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: For technical questions concerning this proposed rule, contact Tara Fitzgerald, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts, 01803–5213; telephone (781) 238–7130; facsimile (781) 238–7199. For legal questions concerning this proposed rule, contact Vincent Bennett, ANE–7, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; email *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On April 19, 2011, SNECMA applied for a new type certificate (TC) for the Silvercrest-2 SC–2D engine model. On April 30, 2014, SNECMA requested an extension to their original TC application, which the FAA granted through June 30, 2015.

For their Silvercrest-2 SC–2D engine model, SNECMA requests an additional takeoff rating to maintain takeoff thrust in certain high ambient temperature conditions with OEI. Therefore, the Silvercrest-2 SC–2D engine model would have two different takeoff ratings. The first rating corresponds with the rated takeoff thrust of the engine. The second takeoff rating maintains the takeoff thrust in certain high ambient temperature conditions for a maximum of 10 minutes. This additional takeoff rating is named, ''Rated 10-Minute OEI Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT).

These special conditions are necessary because the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the additional takeoff rating.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, SNECMA must show that the Silvercrest-2 SC–2D meets the applicable provisions of the applicable regulations in effect on the date of application, except as detailed in paragraphs 21.101(b) and (c). The FAA has determined the following certification basis for the Silvercrest-2 SC–2D engine model:

1. 14 CFR part 33, ''Airworthiness Standards Aircraft Engines,'' dated February 1, 1965, with Amendments 33–1 through 33–31, dated July 18, 2011.

If the FAA finds that the regulations in effect on the date of the application for the change do not provide adequate or appropriate safety standards for the

Silvercrest-2 SC–2D 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 complying with the applicable product airworthiness regulations and the requirements of these special conditions, the Silvercrest-2 SC–2D engine model must also comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 in accordance with the ''Noise Control Act of 1972.''

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

Novel or Unusual Design Features

The Silvercrest-2 SC–2D engine model will incorporate the following novel or unusual design feature:

The SNECMA Silvercrest-2 SC–2D engine model will incorporate an additional takeoff rating to maintain takeoff thrust in certain high ambient temperature OEI takeoff conditions for a maximum of 10 minutes. The result will be two different takeoff ratings, one for the rated takeoff thrust of the engine and the other to maintain the takeoff thrust in certain high ambient temperature OEI takeoff conditions for a maximum of 10 minutes. The additional takeoff rating is referred to as ''Rated 10-Minute OEI Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT).

The Rated 10-minute OEI TOTHAT is a novel and unusual design feature that requires additional airworthiness standards for type certification of the SNECMA Silvercrest-2 SC–2D engine model.

Discussion

These proposed special conditions are necessary because current part 33 regulations do not contain airworthiness standards for airplane applications of OEI ratings. For an airplane application, the OEI rating is the same as the rated thrust of the engine. All OEI ratings in current part 33 regulations are only applicable to rotorcraft applications.

These proposed special conditions were modeled based on the rotorcraft requirements for the 30-second and 2-minute OEI ratings, and modified to represent the airplane application. The Rated 10-minute OEI TOTHAT is similar to the 30-second and 2-minute OEI ratings available in part 33 for rotorcraft engines. The Rated 10-minute OEI TOTHAT shares common features, such as the need to notify the pilot and maintenance personnel about the rating's use, provides data needed for power assurance check, and continued validation of the related maintenance procedures.

The Rated 10-minute OEI TOTHAT is for use during OEI events that occur during takeoff in high ambient temperature conditions, up to 5 degrees Celsius hotter than the rated takeoff thrust corner point. Under these unique conditions (extreme hot day and OEI), the Rated 10-minute OEI TOTHAT leads to an increase in EGT to maintain the takeoff thrust of the engine. These proposed special conditions contain additional mandatory post-flight inspection and maintenance action requirements associated with any use of the Rated 10-minute OEI TOTHAT. These requirements add a rating definition in part 1.1 and mandates mandatory inspections in the ICA; instructions for installing and operating the engine; engine rating and operating limitations; instrument connection; and endurance testing.

The current requirements of the endurance test under § 33.87 represent a typical airplane flight profile and the severity of the takeoff rating. Therefore, the endurance test under § 33.87 covers normal all-engines-operating takeoff conditions for which the engine control system limits the engine to the takeoff thrust rating. The proposed special conditions for the endurance testing requirements are intended to represent the airplane flight profile when an OEI event occurs during takeoff under specified ambient temperatures, and until the mandatory inspection and maintenance actions can be performed. These proposed special conditions require endurance testing that is not less than 135 minutes in duration and demonstrates the engine is capable of the additional Rated 10-minute OEI TOTHAT rating at the higher EGT limit following completion of the tests required by § 33.87(b), without disassembly or modification.

The associated engine deterioration after use of the Rated 10-minute OEI TOTHAT is not known without the intervening mandatory inspections in these special conditions. The mandatory inspections ensure the engine will continue to comply with its certification basis after any use of the Rated 10-minute OEI TOTHAT. The applicant is expected to assess the deterioration from use of the Rated 10-minute OEI TOTHAT. The Airworthiness Limitations section must prescribe the mandatory post-flight inspections and maintenance actions associated with any use of the Rated 10-minute OEI TOTHAT.

These requirements maintain a level of safety equivalent to the level intended by the applicable airworthiness standards in effect on the date of application.

Applicability

As discussed above, these special conditions are applicable to the Silvercrest-2 SC–2D engine model. Should SNECMA apply at a later date for a change to the type certificate to include another engine model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only the Rated 10-minute OEI TOTHAT features on the Silvercrest-2 SC–2D engine model. It is not a rule of general applicability and applies only to SNECMA, who requested FAA approval of this engine feature.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation, Aviation safety, Safety.

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 FAA proposes the following special conditions as part of the type certification basis for the SNECMA Silvercrest-2 SC–2D engine model.

1. Part 1.1 Definitions.

''Rated 10-Minute One Engine Inoperative Take-off Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT) means the approved engine thrust developed under specified altitudes and temperatures within the operating limitations established for the engine, and for continuation of flight operation after failure or shutdown of one engine in a multi-engine airplane during takeoff operation. Use is limited to two periods, no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions.

2. Part 33 Requirements.

In addition to the airworthiness standards in 14 CFR part 33, effective

February 1, 1965, Amendments 33–1 through 33–31 applicable to the engine and the Rated 10-minute OEI TOTHAT, the following special conditions apply:

§ 33.4 Instructions for Continued Airworthiness.

(a) The Airworthiness Limitations section must prescribe the mandatory post-flight inspections and maintenance actions associated with any use of the Rated 10-minute OEI TOTHAT.

(b) The applicant must validate the adequacy of the inspections and maintenance actions required under paragraph § 33.4(a) of these special conditions.

(c) The applicant must establish an in-service engine evaluation program to ensure the continued adequacy of the instructions for mandatory post-flight inspections and maintenance actions prescribed under paragraph § 33.4(a) of these special conditions, and of the data for thrust assurance procedures required by § 33.5(b)(1) of these special conditions. The program must include service engine tests or equivalent service engine test experience on engines of similar design and evaluations of service use of the Rated 10-minute OEI TOTHAT.

§ 33.5 Instruction manual for installing and operating the engine.

(a) Installation Instructions:

(1) The applicant must identify the means, or provisions for means, provided in compliance with the requirements of § 33.29 of these special conditions.

(2) The applicant must specify that the engine thrust control system automatically resets the thrust on the operating engine to the Rated 10-minute OEI TOTHAT level when one engine fails during takeoff at specified altitudes and temperatures, and that the Rated 10-minute OEI TOTHAT is not available when all engines are operational.

(b) Operating Instructions:

(1) The applicant must provide data on engine performance characteristics and variability to enable the airplane manufacturer to establish airplane thrust assurance procedures.

§ 33.7 Engine ratings and operating limitations.

(a) The Rated 10-minute OEI TOTHAT and the associated operating limitations are established as follows:

(1) The thrust is the same as the engine takeoff rated thrust with extended flat rating corner point,

(2) The rotational speed limits are the same as those associated with the engine takeoff rated thrust,

(3) The applicant must establish a gas temperature steady-state limit and, if necessary, a transient gas overtemperature limit for which the time duration is no longer than 30 seconds, and

(4) The use is limited to two periods of no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions prescribed by § 33.4(a) of these special conditions.

(b) The applicant must propose language to include in the type certificate data sheet specified in § 21.41 for the following:

(1) The Rated 10-minute OEI TOTHAT and associated limitations.

(2) As required by § 33.5(b), Operating instructions, include a note stating that ''Rated 10-Minute One Engine Inoperative Take-off Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT) means the approved engine thrust developed under specified altitudes and temperatures within the operating limitations established for the engine, and for continuation of flight operation after failure or shutdown of one engine in multi-engine airplane during takeoff operation. Use is limited to two periods, no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions.

(3) As required by § 33.5(b), Operating instructions, include a note stating that the engine thrust control system automatically resets the thrust on the operating engine to the Rated 10-minute OEI TOTHAT level when one engine fails during takeoff at specified altitudes and temperatures, and that the Rated 10-minute OEI TOTHAT is not available when all engines are operational.

§ 33.28 Engine control systems.

(a) The engine must incorporate a means, or a provision for a means, for automatic availability and automatic control of the Rated 10-minute OEI TOTHAT.

(b) The engine controls managing the OEI takeoff thrust for all ambient conditions must assure that:

(1) The approved rated takeoff thrust is available to the pilot at all times by throttle selection, and

(2) The Rated 10-minute OEI TOTHAT is only available in an OEI condition at specified altitudes and temperatures.

§ 33.29 Instrument connection.

(a) The engine must:

(1) Have means or provisions for means, to alert the pilot when the Rated 10-minute OEI TOTHAT is in use, when the event begins, and when the time interval expires.

(2) Have means, or provision for means, which cannot be reset in flight, to:

(i) Automatically record each use and duration of the Rated 10-minute OEI TOTHAT, and

(ii) Alert maintenance personnel that the engine has been operated at the Rated 10-minute OEI TOTHAT, and permit retrieval of recorded data.

(iii) Have means, or provision for means, to enable routine verification of the proper operation of the means in §§ 33.29(1) and (2) of these special conditions.

§ 33.85(b) Calibration tests.

The applicant must base the calibration test on the thrust check at the end of the endurance test required by § 33.87 of these special conditions.

§ 33.87 Endurance test.

(a) Following completion of the tests required by § 33.87(b), and without intervening disassembly, except as needed to replace those parts described as consumables in the ICA, the applicant must conduct the following test sequence for a total time of not less than 135 minutes:

(1) Ten minutes at Rated 10-minute OEI TOTHAT,

(2) Sixty-five minutes at maximum continuous thrust,

(3) One minute at 50 percent of takeoff thrust,

(4) Ten minutes at Rated 10-minute OEI TOTHAT,

(5) One minute at flight idle,

(6) Ten minutes at Rated 10-minute OEI TOTHAT,

(7) Five minutes at maximum continuous thrust,

(8) One minute at 50 percent of takeoff thrust,

(9) Five minutes at Rated 10-minute OEI TOTHAT,

(10) One minute at flight idle,

(11) Ten minutes at Rated 10-minute OEI TOTHAT,

(12) Five minutes at maximum continuous thrust,

(13) One minute at 50 percent of takeoff thrust,

(14) Nine minutes at Rated 10-minute OEI TOTHAT, and

(15) One minute at flight idle

(b) The test sequence of §§ 33.87(a)(1) through (a)(15) of these special conditions must be run continuously. If a stop occurs during these tests, the interrupted sequence must be repeated unless the applicant shows that the severity of the test would not be reduced if the current tests were continued.

(c) Where the engine characteristics are such that acceleration to the Rated

10-minute OEI TOTHAT results in a transient overtemperature in excess of the steady-state temperature limit identified in § 33.7(a)(3) of these special conditions, the transient gas overtemperature must be applied to each acceleration to the Rated 10-minute OEI TOTHAT of the test sequence in § 33.87(a) of these special conditions.

§ 33.93 Teardown inspection.

The applicant must perform the teardown inspection required by § 33.93(a) after completing the endurance test prescribed by § 33.87 of these special conditions.

§ 33.201 Design and test requirements for Early ETOPS eligibility.

In addition to the requirements of § 33.201(c)(1), the simulated ETOPS mission cyclic endurance test must include two cycles of 10 minute duration, each at the Rated 10-minute OEI TOTHAT; one before the last diversion cycle and one at the end of the ETOPS test.

Issued in Burlington, Massachusetts, on July 11, 2014.

Kimberly K. Smith,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–18074 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105067–14]

RIN 1545–BM17

Segregation Rule Effective Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that modify the effective date provision of recently published final regulations under Section 382 of the Internal Revenue Code. The temporary regulations affect corporations whose stock is or was acquired by the Department of the Treasury (Treasury) pursuant to certain programs under the Emergency Economic Stabilization Act of 2008 (EESA). The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be submitted by October 29, 2014.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–105067–14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–105067–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–105067–14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 317–5353; concerning submission of comments and requests for a public hearing, Oluwafumnilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR Part 1. The temporary regulations modify the effective date provision for TD 9638 [78 FR 62418], published on October 22, 2013, which provided final regulations that altered the operation of certain of the public group segregation rules under section 382. The temporary regulations apply to stock acquired by Treasury pursuant to certain programs under EESA (Programs). In particular, the temporary regulations apply to the subsequent sale by Treasury of that stock. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, if the regulations apply to any small entities, the effect will not be to increase their tax liability, but to prevent a potential increase in tax liability that might otherwise occur. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic copies that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting information

The principal author of these regulations is Stephen R. Cleary, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.382–3 also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

■ **Par. 2.** Section 1.382–3 is amended by revising paragraph (j)(17) to read as follows:

§ 1.382–3 Definitions and Rules Relating to a 5-percent Shareholder.

* * * * *

(j) * * *

(17) *Effective/applicability date.* [The text of the proposed amendment to

§ 1.382–3(j)(17) is the same as the text of § 1.382–3T(j)(17) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–17831 Filed 7–30–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC49

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Proposed rulemaking.

SUMMARY: The Department of the Treasury proposes regulations for the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The proposed regulations concern amounts available to eligible Louisiana parishes from the Gulf Coast Restoration Trust Fund, a fund established in the Treasury of the United States by the RESTORE Act. Treasury published other proposed regulations for the RESTORE Act on September 6, 2013.

DATES: *Comment due date:* September 2, 2014.

ADDRESSES: Treasury invites comments on the allocation to Louisiana parishes contained in this proposed rule. Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Mail: Send to Department of the Treasury, Attention Janet Vail, Room 1132; 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Email: Send to *RESTORErule@treasury.gov.*

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *RESTORErule@treasury.gov* or contact Janet Vail, 202–622–6873.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. One component of the Act, the Direct Component, sets aside 35 percent of the penalties paid into the trust fund for grants to the State of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. The Direct Component provides an equal amount to each of the five Gulf Coast States, and allocates 30 percent of Louisiana's share to the 20 eligible parishes.

On September 6, 2013, Treasury published a proposed rule to implement the Act (78 FR 54801). The proposed rule identified the 20 Louisiana parishes eligible to receive funds under the Direct Component, but not the share of each parish. The Act provides a weighted formula for determining each parish's share. In the notice accompanying the proposed rule, Treasury requested comments on the information and methodology necessary for determining each parish's share. As discussed below, Treasury has considered these comments and other information, and now proposes regulations that allocate a percentage to each eligible Louisiana parish under the Direct Component.

II. This Proposed Rule

Under the Direct Component, each eligible Louisiana parish receives a share based on a weighted formula of three elements: (a) 40 percent based on the weighted average of miles of parish shoreline oiled, (b) 40 percent based on the weighted average of the population of the parish, and (c) 20 percent based on the weighted average of the land mass of the parish. 33 U.S.C. 1321(t)(1)(D)(i). In their comments on the proposed rule, the State of Louisiana and one parish proposed that Treasury include additional factors, in order to account for the degree of oiling, measures of re-oiling, the type of shoreline that experienced oiling, and other factors. They suggested that an approach which takes these factors into account would provide a more comprehensive assessment of injury and fairer allocation of funds. Louisiana did not describe how these additional factors should be weighed or provide a statutory basis for applying these new criteria, and noted that ''creating a consistent and fair metric based on these factors will be very difficult.'' [1]

Treasury is proposing regulations that base the allocation for each eligible parish solely on the factors listed in the Act for the Direct Component. The Act clearly identifies just three factors for determining each parish's share. If Treasury added additional factors and a new formula for weighing them in its regulation, the responsibility for allocating the trust fund would shift from Congress to Treasury. Nothing in the statute or the legislative history indicates that Congress intended Treasury to make its own determination about the relative harm suffered by individual parishes. The touchstone for Treasury's proposed regulation, therefore, is the statute itself.

The first statutory factor is the weighted average of miles of the parish shoreline oiled. For this factor, Treasury used data from the United States Coast Guard showing the number of miles of parish shoreline oiled between 2010, the initial year of response to the *Deepwater Horizon* spill, and July 6, 2012, the date of enactment for the RESTORE Act. According to the Coast Guard, the data were gathered using the Shoreline Clean-up Assessment Technique (SCAT), a systematic method for surveying an affected shoreline after an oil spill. SCAT was performed under the structure of the Gulf Coast Incident Management Team (GC–IMT), the entity

[1] Letter from Garret Graves, State of Louisiana, to Dep't of the Treasury (Nov. 5, 2013) at 6 (available at *www.regulations.gov* under number Treas-DO–2013–0005–0055).

in charge of the *Deepwater Horizon* response. The GC–IMT was led by representatives from the Coast Guard and the State of Louisiana. Treasury believes that the SCAT data are appropriate for determining the share of each Louisiana parish under the relevant standards of the Direct Component in the Act. Treasury takes no position on the data that may be appropriate for other uses in connection with ongoing litigation or natural resource damage assessments.

The second statutory factor is the weighted average of the population of the parish. Treasury used 2012 population estimates for each parish published by the United States Census Bureau. These estimates are available at *http://quickfacts.census.gov/qfd/states/22000.html.*

The third statutory factor is the weighted average of the land mass of each parish. Treasury used data from 2010, the most recent available from the United States Census Bureau. The data are available at *http://quickfacts.census.gov/qfd/states/22000.html.*

The Act does not specify which year's data Treasury should use for oiled shoreline or population. Treasury believes it is reasonable to use 2012 data, thereby fixing the share of each parish upon enactment (July 6, 2012), rather than at some unspecified time in the future. This view is based in part on the statutory language. The Act refers to ''parish shoreline oiled'' in the past tense. 33 U.S.C. 1321(t)(1)(D)(i)(II)(aa). The Act also shows that Congress expected that procedures for implementing the Act, including procedures concerning each parish's share, would be completed shortly after enactment. RESTORE Act, Public Law 112–141 sec. 1602(e), 126 Stat. 588. There is no indication in the Act or its legislative history that Congress intended to base each parish's share on data from future years, which were unforeseeable when the statute was enacted. Population changes and small increases in oiled shoreline for some parishes would both affect the size of parish shares if post-2012 data were used. Accordingly, Treasury interprets the Act as referring to shoreline oiled before July 6, 2012, and to parish populations in 2012.

Using the data described above and the statutory factors, Treasury determined each parish's share with the following formula: Parish allocation = (40% * (parish miles oiled/sum all oiled shoreline for eligible parishes)) + (40% * (parish population/sum of all population for eligible parishes)) + (20% * parish land mass/sum of all land mass for eligible parishes). A detailed description of the data Treasury used to determine each parish's share is available in the docket for this proposed rule at *http://www.regulations.gov,* and at *http://www.treasury.gov/services/restore-act/Pages/default.aspx.* The shares resulting from this calculation are set forth in the proposed regulation.

Treasury invites comments on the allocation to eligible Louisiana parishes for the Direct Component. Comments are due within 30 days after publication of this notice in the **Federal Register**.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires agencies 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. Treasury previously certified that the proposed rule for the entire Act, published on September 6, 2013, will not have a significant economic impact on a substantial number of small entities. While that rule describes procedures concerning the allocation and expenditure of amounts from the trust fund, most of these requirements come from the Act itself or other Federal law, including the total allocation due to Louisiana parishes under the Direct Component. Treasury received no comments from the Louisiana parishes on this certification.

Treasury certifies that this proposed rule will not have a significant impact on a substantial number of small entities. This rule affects only 20 Louisiana parishes, of which six meet the definition of a small entity under the RFA. Even if a substantial number of small entities was affected, any economic impact of this proposed rule would be minimal. The proposed rule is limited to allocating funds to eligible Louisiana parishes according to a statutory formula, and does not impose any new obligations on these parishes. Treasury invites comments on the impact of this rule on small entities.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The proposed rule for the RESTORE Act, published on September 6, 2013, is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. The notification for that proposed rule includes a Regulatory Impact Assessment, which covers any economic impact incident to this proposed rule. This proposed rule has been designated a significant regulatory action, although not economically significant, and has been reviewed by the Office of Management and Budget.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury further proposes to amend 31 CFR subtitle A, part 34, as proposed at 78 FR 54801, Sept. 26, 2013, to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

■ 2. In § 34.302, revise the section heading and the second sentence of paragraph (e) to read as follows:

§ 34.302 Allocation of funds—direct component.

* * * * *

(e) * * * The share of each coastal zone parish is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu, 5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Terrebonne, 9.91281%; Tangipahoa, 3.40337%; and Vermilion, 3.02766%.

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–18131 Filed 7–29–14; 11:15 am]

BILLING CODE 4810–25–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AD00

Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comment.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (hereinafter the ''2008 Farm Bill''), provides that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian tribes (Indian tribes) trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. The proposed rule is needed to implement section 8105 of the 2008 Farm Bill. Pending rulemaking, the Forest Service issued an Interim Directive providing short-term direction for tribal requests for forest products for traditional and cultural purposes.

DATES: Comments must be received in writing by September 29, 2014.

ADDRESSES: Written comments concerning this notice should be addressed to Director, Forest Management Staff, USDA Forest Service, Mail Stop 1103, 1400 Independence Avenue SW., Washington, DC 20250 or by email to *FarmBillForestProductsRule@fs.fed.us.* Comments may also be submitted via the world wide web/Internet at *http://www.regulations.gov.* All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Office of the Director, Forest Management Staff, Sidney Yates Building, Third Floor SW Wing, 201 14th Street SW., Washington, DC or via the world wide web/Internet at *http://www.fs.fed.us/forestmanagement/traditional_cultural/index.shtml.* Visitors are encouraged to call ahead to 202–205–1766 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Assistant Director, Forest Products, 202–205–1753 or Sharon Nygaard-Scott, Forest Service, Forest Management Staff, 202–205–1766, during normal business hours. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Forest Service is issuing this proposed rule to formally implement section 8105 of the 2008 Farm Bill (section 8105). (Section 8105 has also been codified in 25 U.S.C. Chapter 32A—Cultural and Heritage Cooperation Authority, section 3055 Forest Products for Traditional and Cultural Purposes.) Subject to certain statutory limitations, section 8105 allows the Secretary of Agriculture to provide Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. Specifically, section 8105(a) provides that the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

However, pursuant to section 8105(b), Indian tribes are prohibited from using any trees, portions of trees, or forest products provided under section 8105(a) for commercial purposes. While the 2008 Farm Bill does not define commercial purposes, it does define Indian tribe and traditional and cultural purpose. Section 8102(5) defines Indian tribe as any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1). In addition, per section 8102(9), traditional and cultural purpose, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

On December 2, 2009, the Forest Service published an Interim Directive (ID) to the Forest Service Handbook (FSH) 2409.18 to implement section 8105 of the 2008 Farm Bill. The ID was reissued, without change, effective March 8, 2011 (ID 2409.18–2011–1). On June 7, 2012, the Forest Service reissued the ID again (ID 2409.18–2012–2), and revised it to allow the Forest Service use of section 8105's authority during the rulemaking period. The June 7, 2012, ID extended the effective date of the 2011 ID to December 7, 2013. On December 6, 2013, the direction issued in ID 2409.18–2012–2 was reissued, without change, as ID 2409.18–2013–3, and will remain in effect until June 6, 2015.

The ID established Forest Services' policy for providing Indian tribes with trees, portions of trees, or forest products for noncommercial traditional and cultural purposes. Based on the comments received on the ID during formal government-to-government consultation, as well as the Agency's experience using the ID to implement section 8105 over the last 3 1/2 years, the Agency is now publishing this proposed rule.

This proposed rule adds § 223.15 to 36 CFR Part 223, Subpart A. Section 223.15(a) authorizes Regional Foresters or designated Forest Officers to provide trees, portions of trees, or forest products to Indian tribes free of charge for noncommercial traditional and cultural purposes. Section 223.15(b) contains the 2008 Farm Bill's statutory definitions of ''Indian tribe'' and ''traditional and cultural purpose,'' as well as the Forest Services' regulatory definition of ''tribal officials.''

Sections 223.15(c) and (d) describe who can request trees, portions of trees, or forest products for noncommercial traditional and cultural purposes, and where those requests should be directed. Tribal Officials should submit requests for forest products to their local Forest Service District Ranger's office for routing to the appropriate designated authority. In addition, Tribal Officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose. A designated Forest Officer is an individual whom the Regional Forester has granted written authority to provide products under § 223.15. Currently, there is no limitation on the number of requests or authorizations per unit of a forest product or the number of requests or authorizations per Indian tribe. There is currently no limitation on the amount of trees, portions of trees, or forest products that can be requested at any one time. However, Forest Officers cannot grant materials in excess of the value limitations at § 223.15(e) in any given fiscal year.

Section 223.15(f) explains that the Forest Service may condition or deny requests for trees, portions of trees, or forest products under § 223.15. Finally, § 223.15(g) provides that all decisions made under § 223.15 must comply with relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws, regulations, and policies. The Forest Service will do its best to process requests received in a reasonable period of time, in light of these statutory and regulatory requirements.

II. Formal Government-to-Government Consultation

After issuance of the December 2, 2009, Interim Directive (ID 2409.18–2009–2), the Forest Service formally entered into consultation with Indian tribes, with the Regional Foresters extending invitations to Indian tribes by May 1, 2010. The ID was subsequently revised to allow the Forest Service use of section 8105's authority during the rulemaking period. The ID also extended the effective date to December 7, 2013 (ID 2409.18–2012–2). The ID was reissued, without change, as ID 2409.18–2013–3, and will remain in effect until June 6, 2015. This consultation was conducted under Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments. Indian tribes were provided the ID to FSH 2409.18, and were invited to consult on proposed changes to 36 CFR part 223. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010.

Regional Foresters were directed to invite all federally recognized Indian tribes in their Region to consult. In addition, they were directed to invite any federally recognized Indian tribes who have expressed an historical connection to National Forest System lands in their Region, even if they no longer reside there. To make the consultation more effective, the Forest Service provided Indian tribes with a question and answer document describing the Interim Directive and Forest Services' intent to implement section 8105 of the 2008 Farm Bill through proposed changes to 36 CFR part 223.

Summary of Comments and Responses

The Forest Service received 88 comments as a result of consultation, several of which were similar in scope and nature. The Agency's responses to the comments are provided below.

The Forest Service Should Define the Term ''Forest Products''

The 2008 Farm Bill does not define ''forest products'' under section 8102 definitions. Neither does section 8105 define ''forest products'' or provide a list of forest products. The Forest Service has chosen not to further define the statute's use of the term ''forest products''. Although not defined, the term ''forest products'' is used in other laws and regulations, including but not limited to, the Multiple-Use Sustained-Yield Act of 1960, as amended; the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended; and 36 CFR 223.

Does the Forest Service consider gravel to be a forest product under the proposed rule?

Gravel is included in the definition of mineral materials at 36 CFR 228.42. Thus, gravel is not considered a forest product. In addition, the Agency does not consider animals, animal parts, insects, minerals, rocks, soil, water, and worms as forest products.

Barter and Sale of Forest Products Are Traditional and Cultural Purposes and the Proposed Rule Provides Forest Products for Noncommercial Traditional and Cultural Purposes

Traditionally, Indian tribal members gather forest products to barter and sell. However, this rule specifically provides forest products to Indian tribes for noncommercial traditional and cultural uses. This rule is promulgated to make it easier for Indian tribes to request appropriate amounts of forest products. Subject to various limitations, individual Indian tribal members will have free use to gather forest products under the separate rule, Special Forest Products and Botanical Products Final Rule once it is promulgated.

The Forest Service Should Provide Individual Members of Indian Tribes With Free Trees, Portions of Trees, and Forest Products Under Section 8105

Tribes were concerned that ''trees, portions of trees, or forest products'' should be free of charge not only to Indian tribes, but also to individual ''enrolled members.'' The Forest Service is promulgating an entirely separate rule, the Special Forest Products and Forest Botanical Products Final Rule, which may be used by all individuals, including, but not limited to individual tribal members outside of their affiliation with an Indian tribe, to obtain free use of forest products, subject to various limitations. When finalized, that rule may be used to obtain free use for traditional and cultural purposes in appropriate instances. This proposed rule, however, is a separate rule specifically providing forest products to an Indian tribe, and in appropriate amounts for traditional and cultural purposes, which may be greater than what the Special Forest Products and Forest Botanical Products Final Rule provides to an individual, in order to accommodate tribal requests. Tribal requests will be submitted by tribal officials on behalf of an Indian tribe.

Indian Tribes in California Want the Forest Service To Continue Using the Region 5 Gathering Policy

Indian tribes of California are concerned with retaining and securing the ''Region 5 Gathering Policy''—an interagency agreement between the Forest Service Region 5 and the California Bureau of Land Management—where the gathering of forest products for traditional and cultural purposes continues to be open to individuals and non-federally recognized tribes. Section 8105 only authorizes the Secretary to provide products to federally recognized Indian tribes. The process for members of non-federally recognized tribes to request forest products for personal use is outside the scope of this rulemaking and will be addressed separately under the Special Forest Products and Forest Botanical Products Final Rule.

How do value limitations affect an Indian tribe's requests for forest products?

The value limits in § 223.15(e) are internal Forest Service designations of authority that specify which Forest Service Officers may approve forest products requests based on the value of the forest products requested. The value limitations do not limit the value of forest products that Indian tribes may request. The limits represent the total amount of value a particular Forest Service Officer may provide an Indian tribe in a given fiscal year. Pursuant to § 223.15(d), requests for any value of forest products should be directed to the appropriate Forest Service District Ranger's Office from which the products are being requested. The District Ranger's Office will then ensure that the request is evaluated by a Forest Service Official authorized under § 223.15(e).

For all forest products, including timber, the Forest Service determines fair market value by methods authorized by the Chief, Forest Service through issuance of Agency directives. Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments (36 CFR 223.60). The Chief is also required to establish minimum stumpage rates for species and products on individual National Forests, or groups of National Forests. All forest products, including timber, are required to be sold for appraised value or minimum stumpage rates, whichever is higher, with limited exceptions (36 CFR 223.61). The determination of these values or rates

does not limit how much timber an Indian tribe can request.

If a tribe makes a request for a species that has a considerably higher value than the maximum value that can be authorized by a local official, then the request will be forwarded to a Forest Official who has the authority to grant the request. Pursuant to § 223.15(e), if the value of the species requested is greater than the value that may be locally granted, the request will be forwarded as follows—District Ranger (value limitation $25,000), Forest Supervisor, (value limitation $50,000), and Regional Forester (value limitation $100,000). Requests that exceed $100,000 in value will be reviewed and approved by the Chief of the Forest Service.

Who is drafting this rule?

The proposed and final regulation will be written by personnel at the Forest Service's Washington Office.

Indian Tribes Are Concerned About Access to Gathering Areas in National Forests

Several Indian tribes expressed concerns about tribal elders having access to gathering areas, gathering being restricted due to commercial harvest, restricting commercial harvest to outside traditional gathering areas and designating gathering areas specifically for traditional and cultural purposes. While this rule does not designate gathering areas nor restrict where forest activities can occur, Indian tribes are encouraged to identify to local Forest Officials the location of forest products used for traditional and cultural purposes. Local Forest Officers will then be aware of gathering areas when planning projects.

Can standing timber be harvested under section 8105?

Under this rule, timber is not restricted to dead and down. However, cutting and removal of green timber shall be approved at the local Forest level.

Will the Forest Service keep information related to medicinal and ceremonial plants confidential?

A commenter expressed the need to keep information related to medicinal and ceremonial plants, including identification, uses, and locations, confidential. The Forest Service recognizes that confidentiality of medicinal and ceremonial plants is of the utmost concern to Indian tribes and shall, to the full extent allowed under law, maintain the confidentiality of culturally sensitive information provided by Tribes with the express expectation of confidentiality.

Do forest products for traditional and cultural purposes have priority over other uses and can traditional gathering areas be closed to those uses?

Indian tribes provided comments regarding forest products for traditional and cultural purposes having priority over other uses, such as, commercial uses (timber sales), and stated that, in order to maintain sustainability and access, traditional gathering areas should be closed to other uses. This rule does not prioritize use on National Forest System lands. The Forest Service does intend to ensure sustainability and access for multiple uses and users of the national forests in accordance with the Multiple Use Sustained Yield Act of 1960, as amended (16 U.S.C. 528–531).

The Forest Service Should Adopt the Interim Handbook Directive as Its Final Policy

Indian tribes would like consideration of comments provided through government-to-government consultation considered in a final rule. The Forest Service has considered all Indian tribes' comments in drafting this proposed rule. As a result, the Forest Service took the two actions described below. First, in response to Indian tribes stating they support the interim handbook directive being adopted as the final rule/final handbook directive, the Forest Service has incorporated the ID into the regulatory text of this proposed rule. Second, several Indian tribes stated they approve or support increasing the current value limitations for Forest Service officials to grant forest products to Indian tribes for traditional and cultural purposes, as described in the question and answer document supplied by the Forest Service during consultation. In response, the Forest Service has made these increased value limitations a part of the proposed regulation at § 223.15(e).

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under U. S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review as amended by 13422. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding consideration of small entities and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Executive Order. The proposed rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

Environmental Impact

This proposed rule has no direct or indirect effect on the environment. The rules at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions that do not significantly affect the quality of the human environment. The Department's assessment is that this proposed rule falls within this category of actions, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Federalism

The Department has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and concluded that this action will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Consultation With Tribal Governments

Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service entered into consultation with Indian tribes regarding this proposed

rule. Beginning on or before May 1, 2010, Indian tribes were provided with the Forest Service's Interim Directive on section 8105 of the 2008 Farm Bill, and were invited to consult on changes to 36 CFR part 223. In addition, the Forest Service provided a question and answer document related to the Interim Directive and regulatory actions the Agency was considering to implement section 8105. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010. The Forest Service received 88 comments as a result of consultation, including some received after September 1; all were considered in the development of this proposed rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that this action will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

According to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320, a revised information collection package has been sent to OMB for review and comment.

Title: Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt.

OMB Control Number: 0596–0085.

Type of Request: Revision.

Abstract: The information collection titled *Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt* is being revised to accommodate requests by Indian tribes for free use under section 8105 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) [hereinafter the ''2008 Farm Bill''], per the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. Should Indian tribes seeking free use under the 2008 Farm Bill authority wish to obtain proof of possession, as may be required in some States, they could be issued a FS–2400–8 free use permit.

As stated earlier in this Proposed Rule, section 8105 of the 2008 Farm Bill provides that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian tribes (Indian tribes) trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. Section 8105 has also been codified in 25 U.S.C. Chapter 32A—Cultural and Heritage Cooperation Authority, section 3055 Forest Products for Traditional and Cultural Purposes. Pending rulemaking, the Forest Service issued policy via an Interim Directive (ID) providing short-term direction for tribal requests for forest products for traditional and cultural purposes. (The ID has been reissued as ID 2409.18–2013–2.)

Under 16 U.S.C. 551, individuals and businesses wishing to remove forest products from National Forest System lands must request a permit. Federally recognized Indian tribes seeking products under the 2008 Farm Bill authority must make a request for free use. To obtain a permit, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5–223.13, which authorizes free use or sale of timber or forest products. As noted above, section 8105 of the 2008 Farm Bill sets forth conditions under which free use of trees, portions of trees, or forest products may be granted to federally recognized Indian tribes. Upon receiving a permit, the permittee must comply with the terms of the permit (36 CFR 261.6), which designates forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. The collected information will help the Forest Service and the Bureau of Land Management (for form FS–2400–1) oversee the approval and use of forest products by the public.

When applying for forest product removal permits, applicants (depending on the products requested) would provide information needed to complete one of the following:

- FS–2400–1, Forest Products Removal Permit and Cash Receipt, is used to sell timber or forest products such as fuelwood, Christmas trees, or pine cones (36 CFR 223.1, 223.2). The Bureau of Land Management (BLM) and the Forest Service share this form, which the Bureau of Land Management identifies as BLM–5450–24 (43 U.S.C. 1201, 43 CFR 5420). This form would not be used to issue products requested by federally recognized Indian tribes under the authority of section 8105 of the 2008 Farm Bill.
- FS–2400–4/4ANF, Forest Products Contract and Cash Receipt, are used to sell timber products such as sawtimber or forest products such as fuelwood. These forms would not be used to issue products requested by federally recognized Indian tribes under the authority of section 8105 of the 2008 Farm Bill.
- FS–2400–8, Forest Products Free Use Permit, allows use of timber or forest products at no charge to the permittee (36 CFR 223.5–223.13). This form could be used to issue products requested by federally recognized Indian tribes under section 8105 of the 2008 Farm Bill.

Each form listed above implements different regulations and has different provisions for compliance, but collects similar information from the applicant for related purposes.

The Forest Service and the Bureau of Land Management will use the information collected on form FS–2400–1 to ensure identification of permittees in the field by agency personnel. The Forest Service will use the information collected on forms FS–2400–4/4ANF and/or FS–2400–8 to:

- Ensure that permittees obtaining free use of timber or forest products qualify for the free-use program.
- Ensure that permittees obtaining free use of timber or forest products, under 36 CFR 223.8, do not receive product value in excess of that allowed by regulations. Note, however, that under section 8105 of the 2008 Farm Bill, there is no stated maximum free use limitation.
- Ensure that applicants purchasing timber harvest or forest products permits non-competitively do not exceed the authorized limit in a fiscal year (16 U.S.C. 472(a)).
- Ensure identification of permittees in the field by Forest Service personnel.

Applicants may apply for more than one forest products permit or contract per year. For example, an applicant may obtain a free use permit for a timber product such as pine cones (FS–2400–8) and still purchase fuelwood (FS–2400–4/4ANF). Additionally, there is no limitation to the number of requests that each federally recognized Indian tribe may make under the 2008 Farm Bill authority.

Individuals and small business representatives usually request and apply for permits and contracts in person at the office issuing the permit.

Applicants provide the following information, as applicable:

- Name.
- Address.
- Personal identification number such as tax identification number, social security number, driver's license number, or other unique number identifying the applicant.

Under this proposed rule, federally recognized Indian tribes making requests under the 2008 Farm Bill authority would make their request in writing ''. . . . directly by a tribal

official who has been authorized by the Indian tribe to make such requests; or . . . by providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.'' Additionally, ''Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose . . .''

Agency personnel enter the information into a computerized database to use for subsequent requests by applicants for a forest product permit or contract. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant.

The data gathered is not available from other sources. The collected data is used to ensure:

- Applicants for free use permits meet the criteria for free use of timber or forest products authorized by regulations at 36 CFR 223.5–223.13 or under section 8105 of the 2008 Farm Bill,
- Applicants seeking to purchase and remove timber of forest products from Agency lands meet the criteria under which sale of timber or forest products is authorized by regulations at 36 CFR 223.80, and
- Permittees comply with regulations and terms of the permit at 36 CFR 261.6.

The collection of this information is necessary to ensure that applicants meet the requirements of the forest products program; those obtaining free-use permits for forest products qualify for the program; applicants purchasing noncompetitive permits to harvest forest products do not exceed authorized limits; and that Federal Agency employees can identify permittees when in the field.

Estimate of burden: Reporting burden for the collection of information is estimated to average 5 minutes per response.

Respondents: Individuals, small businesses, and, for requests made under section 8105 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651), federally recognized Indian tribes.

Estimated Number of Respondents: 212,634.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 318,951.

Estimated Total Annual Burden Hours: 26,579.25.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of burden 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.

All comments in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summaraized and included in the request for OMB approval.

Upon approval of the final rule information collection package, the asssociated burden and any forms associated with this rulemaking will be merged into OMB control number 0596–0085, Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, and it has been determined that it has no effect on the supply, distribution, or use of energy. This proposed rule is administrative in nature and, therefore, the preparation of a statement of energy effects is not required.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. When the final rule is adopted, (1) all State and local laws and regulations that conflict with the final rule or that would impede full implementation of this rule will be preempted, (2) no retroactive effect will be given to the final rule; and (3), the Department will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This action will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National Forests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Forest Service, U.S. Department of Agriculture, proposes to amend 36 CFR part 223 as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, 113 Stat. 1501a, 16 U.S.C. 528 note; unless otherwise noted.

■ 2. Add § 223.15 to subpart A to read as follows:

§ 223.15 Provision of trees, portions of trees, or forest products to Indian tribes for noncommercial traditional and cultural purposes.

(a) Pursuant to section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246, 122 Stat. 1651) [hereinafter the ''2008 Farm Bill''], Regional Foresters or designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:

(1) The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and

(2) The trees, portions of trees, or forest products will not be used for commercial purposes.

(b) The following definitions apply to this section:

Indian tribe. The term ''Indian tribe'' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

Traditional and cultural purpose. The term ''traditional and cultural purpose,'' with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

Tribal officials: The term ''tribal officials'' means elected or duly appointed officials of Indian tribal governments.

(c) Requests for trees, portions of trees, or forest products made under this section must be submitted to the local Forest Service District Ranger's Office(s) in writing. Requests may be made:

(1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or

(2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.

(d) Requests for trees, portions of trees, and forest products made under this section must be directed to the appropriate Forest Service District Ranger(s)' Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose. When two or more National Forests are involved, all of the involved Forest Service District Ranger's Offices should be notified of the requests made on other forests.

(e) Agency Line Officers and managers (who have been authorized by name through official Forest Service correspondence) are authorized to provide trees, portions of trees, and forest products under this section subject to the following limitations:

(1) District Rangers and Forest Officers may provide material not exceeding $25,000 in value in any one fiscal year to an Indian tribe;

(2) Forest Supervisors may provide material not exceeding $50,000 in value in any one fiscal year to an Indian tribe;

(3) Regional Foresters may provide material not exceeding $100,000 in value in any one fiscal year to an Indian tribe; and

(4) The Chief of the Forest Service may provide material exceeding $100,000 in value to an Indian tribe.

(f) A request for trees, portions of trees, or forest products under this section may be conditioned or denied for reasons including, but not limited to the following:

(1) Protecting public health and safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Complying with Federal and State laws and regulations;

(4) Ensuring sustainability; or

(5) Otherwise protecting National Forest System land and resources.

(g) All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws and regulations.

Dated: July 23, 2014.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2014–18021 Filed 7–29–14; 11:15 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0927; FRL–9913–03–OAR]

RIN 2060–AS28

Greenhouse Gas Reporting Program: Addition of Global Warming Potentials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to add chemical-specific and default global warming potentials (GWPs) for a number of fluorinated greenhouse gases (GHGs) and fluorinated heat transfer fluids (HTFs) to the general provisions of the Greenhouse Gas Reporting Rule. Currently, these fluorinated GHGs and HTFs are not assigned GWPs under the rule. The proposed changes would increase the completeness and accuracy of the carbon dioxide (CO_2)-equivalent emissions calculated and reported by suppliers and emitters of fluorinated GHGs and HTFs. In addition, the EPA is proposing conforming changes to the provisions for the Electronics Manufacturing and Fluorinated Gas Production source categories.

DATES: Comments must be received on or before September 2, 2014, unless a hearing is requested. If a hearing is requested, comments must be received on or before September 15, 2014.

Public Hearing. The EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by August 7, 2014. Upon such request, the EPA will hold the hearing on August 15, 2014, in the Washington, DC area. The EPA will provide further information about the hearing on the Greenhouse Gas Reporting Program Web site, *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html* if a hearing is requested.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0927, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2009–0927 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA–HQ–OAR–2009–0927, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0927, Addition of Global Warming Potentials. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Should you choose to submit information that you claim to be CBI in response to this notice, clearly mark the part or all of the comments that you claim to be CBI. For information that you claim to be CBI in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information claimed as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2009–0927.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Do not submit information that

you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *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, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should be free of special characters, any form of encryption, and any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReporting@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by Contact Us. To obtain information about the public hearing or to register to speak at the hearing, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at (202) 343–9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are proposed amendments to existing regulations. If finalized, these amended regulations would affect emitters and suppliers of fluorinated greenhouse gases (GHGs). Regulated categories and examples of affected entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical Equipment Manufacture or Refurbishment.	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid Crystal Display (LCD) unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems (MEMS) manufacturing facilities.
Fluorinated Gas Production	325120	Industrial gases manufacturing facilities.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	336391	Motor vehicle air-conditioning manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	423730	Automotive air-conditioners merchant wholesalers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.

Table 1 of this preamble is not intended to be exhaustive, but rather lists the types of facilities that the EPA is now aware could be potentially affected by the reporting requirements. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in subparts I, L, T, DD, SS, OO, and QQ. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

AR4 Fourth Assessment Report
AR5 Fifth Assessment Report
BAMM Best available monitoring methods
CAA Clean Air Act
CBI Confidential business information
CFC Chlorofluorocarbon
CFR Code of Federal Regulations
CO_2 Carbon dioxide
CO_2e CO_2-equivalent
e-GGRT Electronic Greenhouse Gas Reporting Tool
EPA U.S. Environmental Protection Agency

FLIGHT Facility Level Information on Greenhouse Gases Tool
FR Federal Register
GHG Greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GWP Global warming potential
HCFC Hydrochlorofluorocarbon
HCFE Hydrochlorofluoroether
HFC Hydrofluorocarbon
HFE Hydrofluoroether
HTF heat transfer fluid
IPCC Intergovernmental Panel on Climate Change
LCD Liquid crystal display
MEMS Micro-electro-mechanical systems
$MtCO_2e$ Metric tons carbon dioxide equivalent
N_2O Nitrous oxide
NAICS North American Industry Classification System
NF_3 Nitrogen trifluoride
NODA Notice of data availability
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFC Perfluorocarbon
RFA Regulatory Flexibility Act
RY Reporting year
SAR Second Assessment Report
SF_6 Sulfur hexafluoride
SIP State implementation plan
PSD Prevention of significant deterioration
UMRA Mandates Reform Act of 1995
UNFCCC United Nations Framework Convention on Climate Change
WWW Worldwide Web

Table of Contents

I. Background
A. How is this preamble organized?
B. Background on the GHG Reporting Rule
C. Legal Authority
D. When would these amendments apply?
II. Proposed Amendments
A. Summary of Proposed Amendments
B. Background on GHGRP GWPs
C. Today's Proposed Rule
D. Relationship Between This Proposed Rule and Proposed Amendments to Subpart L
E. Relationship Between This Proposed Rule and Default GWP in Subpart I
F. Calculation of Differences and Changes in CO_2e Quantities Under Subpart I and Subpart L
G. Relationship Between This Proposed Rule and Permitting Requirements
III. 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 (RFA)
D. Unfunded Mandates Reform Act (UMRA)
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 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. Background

A. How is this preamble organized?

The first section of this preamble contains background information regarding the Greenhouse Gas Reporting Program (GHGRP) and information on when the amendments would become effective if finalized. This section also discusses the EPA's use of our legal authority under the Clean Air Act (CAA) to collect data under the Greenhouse Gas Reporting Rule at 40 CFR part 98, hereinafter referred to as the ''GHG Reporting Rule'' or ''Part 98.''

The second section of this preamble describes in detail the changes that we are proposing, presents the EPA's rationale for the proposed changes, and identifies issues on which the EPA is particularly interested in receiving public comments.

Finally, the third section of the preamble discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on the GHG Reporting Rule

The GHG Reporting Rule was published in the **Federal Register** on October 30, 2009 (74 FR 56260). Part 98 became effective on December 29, 2009, and requires reporting of GHGs from certain facilities and suppliers. The October 30, 2009 final rule established reporting requirements for 28 categories of GHG emitters and suppliers, including Suppliers of Industrial Greenhouse Gases (including producers, importers, and exporters of fluorinated GHGs), subpart OO. A notice finalizing reporting requirements for Magnesium Production, subpart T, was published on July 12, 2010 (75 FR 39736). A notice finalizing reporting requirements for the following categories was published on December 1, 2010 (75 FR 74774): Electronics Manufacturing, subpart I; Fluorinated Gas Production, subpart L; Electrical Transmission and Distribution Equipment Use, subpart DD; Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams, subpart QQ; and Electrical Equipment Manufacture or Refurbishment, subpart SS.

C. Legal Authority

The EPA is proposing these rule amendments under its existing CAA authority provided in CAA section 114. As stated in the preamble to the 2009 final rule (74 FR 56260), CAA section 114 provides the EPA broad authority to require the information addressed in this proposed rule because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions.

D. When would these amendments apply?

The EPA anticipates publishing a final rule based on this proposal in time for the final rule to be effective for the reporting of data gathered in 2014 (i.e., Reporting Year 2014), which must be reported to the EPA by March 31, 2015.

II. Proposed Amendments

A. Summary of Proposed Amendments

The EPA is proposing to amend Table A–1 to subpart A of 40 CFR part 98 (Table A–1), the compendium of GWPs used to calculate carbon-dioxide equivalents (CO_2e) under the GHGRP, to add chemical-specific GWPs for 103 fluorinated GHGs. The proposed chemical-specific GWPs are primarily drawn from the Fifth Assessment Report (AR5) published by the Intergovernmental Panel on Climate Change (IPCC) in 2013, which is discussed further in Section II.B. of this preamble.[1]

The EPA is also proposing to amend Table A–1 to add default GWPs for fluorinated GHGs and fluorinated HTFs for which peer-reviewed GWPs are not available. These default GWPs would be calculated and assigned based on fluorinated GHG group and would be based on the chemical-specific GWPs for the compounds in Table A–1 as it would be amended under today's proposal.

In addition, as discussed further in sections II.D. and II.E. of this preamble, we are proposing conforming changes to subparts I and L, which include their own default GWPs for purposes of certain CO_2e calculations.

This amendment would generally not affect the GWPs of the GHGs currently included in Table A–1.[2] As discussed further in Section III.B of this preamble, we do not anticipate that finalizing the GWPs proposed in this action would

[1] IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp.

[2] The sole exception is the GWP for sevoflurane, which is proposed to be amended here because a GWP for this chemical is available in AR5 but was not included in previous IPCC Assessment Reports.

expand the set of facilities required to report under the Greenhouse Gas Reporting Rule. However, to allow for the possibility that some facilities or suppliers could become newly subject to one or more subparts of part 98 due to the addition of the GWPs, we are proposing special provisions for these facilities regarding the timing of reporting and the use of best available monitoring methods (BAMM).

Except in the case of subpart L, which is discussed in Section II.D. of this preamble, reporters would not be required to resubmit their CO_2e emissions for prior years. Instead, for facilities affected by this rulemaking, we would recalculate CO_2e emissions for Reporting Years (RY) 2010–2013 and publish them in our Facility Level Information on Greenhouse Gases Tool (FLIGHT) using the most recent and comprehensive GWPs in Table A–1. This is the same approach that we finalized in the final rule entitled ''2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements'' (78 FR 71904, November 29, 2013; hereinafter referred to as ''final 2013 Revisions Rule''), except that this recalculation would occur in 2015 rather than 2014.

B. Background on GHGRP GWPs

Table A–1 is a compendium of GWP values of certain GHGs that are required to be reported under one or more subparts of the Greenhouse Gas Reporting Rule. These GWPs are used to convert tons of chemical into tons of CO_2-equivalent (CO_2e) for purposes of various calculations and reporting under the rule. As indicated in the **Federal Register** notice for the final Part 98 (74 FR 56348), it is the EPA's intent to periodically update Table A–1 as GWPs are evaluated or reevaluated by the scientific community. This will provide a more accurate and complete account of the atmospheric impacts of GHG emissions and supplies.

GWPs that have been newly evaluated or reevaluated in the peer-reviewed scientific literature are periodically consolidated and published by the IPCC. The initial Table A–1 finalized in the 2009 Greenhouse Gas Reporting Rule included GWP values from the Second Assessment Report (SAR) and, for gases that were not included in SAR, from the Fourth Assessment Report [3] (hereinafter referred to as ''IPCC AR4'' or ''AR4''). (In addition, Table A–1 included a GWP for one fluorinated GHG that had been published in the peer-reviewed literature but not an IPCC report, the GWP for sevoflurane.) [4] The IPCC recently published AR5, which contains GWPs for a number of fluorinated GHGs that were not included in either SAR or AR4.

The scope of the fluorinated compounds reported under the GHGRP is established by the definition of ''fluorinated GHG'' at 40 CFR 98.6 (and, for subpart I, ''fluorinated HTF'' at 40 CFR 98.98), rather than by inclusion in Table A–1. The EPA therefore receives reports of emissions and supplies for a number of fluorinated compounds that have not had GWPs included in Table A–1.[5] At present, these supplies, and a large fraction of these emissions, are assigned a GWP of zero for purposes of GHGRP calculations and reporting, including threshold determinations.[6]

1. Recent Actions Related to GHGRP GWPs

The EPA has recently undertaken several efforts to improve the quality and completeness of the GWPs used to calculate and report emissions under the GHGRP. On November 29, 2013, we published the final 2013 Revisions Rule. That rule amended Table A–1 to update the GWPs for GHGs included in AR4 to the AR4 values. The revisions improved the quality of reported CO_2e emissions and supply by reflecting improved scientific understanding (since the publication of SAR) of the radiative forcing and atmospheric lifetimes of the GHGs that have GWPs in AR4. In addition, for those GHGs, the revisions ensured comparability of data collected in the GHGRP to the Inventory of U.S. Greenhouse Gas Emissions and Sinks that the EPA compiles annually to meet international commitments under the United Nations Framework Convention on Climate Change (UNFCCC). Countries that submit GHG inventories under the UNFCCC have decided to use AR4 GWPs for the GHGs that have AR4 GWPs, beginning with the inventories submitted in 2015.[7]

In the proposed 2013 Revisions Rule, we proposed to adopt GWPs for 26 additional fluorinated GHGs not included in Table A–1 or AR4. The EPA received comments on the proposed 2013 Revisions Rule stating that we should not include GWPs in Table A–1 for compounds that are not included in an IPCC report or peer reviewed. We did not include these GWPs in the final 2013 Revisions Rule because we agreed with commenters that we needed additional time to evaluate our approach to assigning GWPs for compounds not included in AR4. In the preamble to the final rule, we noted that we might address these compounds in a separate future action.

On April 5, 2013, we published a Notice of Data Availability (NODA) (78 FR 20632) regarding another 43 fluorinated GHGs and HTFs whose GWPs were not included in Table A–1.[8] The NODA announced to the public the following: (1) The availability of estimated GWPs for eight of these compounds, as well as data and analysis submitted in support of these values, and (2) the availability of approximate GWPs and/or chemical structure information for another 35 compounds, for whose GWPs we did not possess supporting data and analysis. We requested and received comment on this information.

On November 18, 2013, we proposed amendments to subpart L, Fluorinated Gas Production, that included an amendment to establish within subpart L a new set of default GWPs by fluorinated GHG group for the emissions calculated and reported under that subpart (78 FR 69337; hereinafter referred to as ''proposed amendments to subpart L''). The proposed set of five default GWPs would replace the current

[3] IPCC Fourth Assessment Report (AR4), 2007. Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp.

[4] Langbein, T., H. Sonntag, D. Trapp, A. Hoffmann, W. Malms, E.-P. Röth, V. Mörs and R. Zellner (1999). ''Volatile anaesthetics and the atmosphere: atmospheric lifetimes and atmospheric effects of halothane, enflurane, isoflurane, desflurane and sevoflurane.'' British Journal of Anaesthetics 82 (1): 66–73, discussed in the Technical Support Document for Industrial Gas Supply: Production, Transformation, and Destruction of Fluorinated GHGs and N_2O, Office of Air and Radiation, USEPA, February 6, 2009.

[5] Such reports have been received under subparts I, L, OO, and QQ.

[6] For most subparts, including subparts I, OO, and QQ, reporters are required to report CO_2e only for fluorinated GHGs listed in Table A–1. Subpart I includes a default GWP of 2,000 for purposes of various calculations (but not reporting) as discussed in section II.E. of this preamble. Subpart L includes default GWPs of 2,000 and 10,000 for purposes of both calculations and reporting. Under the amendments to subpart L discussed below, these two default GWPs would be replaced by five default GWPs.

[7] As discussed in the notices for the proposed and final 2013 Revisions Rule, the IPCC publishes Scientific Assessment Reports, including updated and expanded sets of GWPs, approximately every six years. The countries that submit annual GHG inventories under the UNFCCC update the GWPs that they use for those inventories less frequently. For example, the GWPs from the IPCC SAR have been used for UNFCCC reporting for over a decade.

[8] We had not included these compounds in the proposed 2013 Revisions Rule because documentation for GWPs for these compounds was limited at the time that the proposal was being prepared. We subsequently received more documentation from the compounds' manufacturers.

set of two default GWPs in subpart L that are applied to fluorinated GHGs that are not included in Table A–1, which would increase the precision and accuracy of calculated CO_2e emissions. We requested and received comments on the proposed fluorinated GHG groups and associated default GWPs included in the proposed amendments to subpart L.

2. Summary of Comments Related to Addition of GWPs

The EPA received five comments on the NODA and five comments on the proposed 2013 Revisions Rule that were related to the proposed addition of the GWPs for 26 fluorinated GHGs. A detailed summary of and response to all comments received on the proposed 2013 Revisions Rule is provided in the docket for that final rule (EPA–HQ–OAR–2012–0934). We are presenting an overview here because some of those comments have also informed the approach we are proposing under this rule for establishing chemical-specific and default GWPs for additional fluorinated GHGs in Table A–1. We also received three comments on the proposed amendments to subpart L that were related to the proposed addition of GWPs to Table A–1. We discuss those comments in this notice to the extent relevant to the approach we are proposing in this action.

Several commenters on the actions noted above supported adding GWPs to Table A–1 for the compounds included in the proposed 2013 Revisions Rule and NODA. Commenters stated that to characterize emissions and trends effectively, it is important for the EPA to use the most recent and accurate GWP values available. Other commenters stated that the EPA should add new GWPs to Table A–1 only after these GWPs have been included in an IPCC Scientific Assessment Report. They argued that GWPs that have been published in IPCC reports are less likely to change over time, and are likely to change less significantly, than GWPs that have been derived through ''a less rigorous scientific process.''

C. Today's Proposed Rule

1. General Approach To Addition of GWPs to Table A–1

As noted in the final 2013 Revisions Rule, the EPA intends to weigh multiple considerations in updating the set of GWPs used under the GHGRP. These include the accuracy of the GWPs, the consistency of those GWPs with the GWPs used in other national and international programs, the predictability and stability of the GWPs, the source of the GWPs, and the impacts of those GWPs on other regulatory programs. We are weighing these considerations for this proposed rule as we did in developing the final 2013 Revisions Rule. However, there is an important difference between the two rules. In the final 2013 Revisions Rule, we weighed these considerations primarily in the context of updating the GWPs for GHGs that were already listed in Table A–1. In this proposed rule, we are weighing these considerations in the context of proposing to add GWPs for GHGs that are not presently included in Table A–1. For such GHGs, the improvement in accuracy associated with listing a GWP in Table A–1 is likely to be large, because the alternative is generally to continue to assign these GHGs a GWP of zero for purposes of the calculations and reporting under the GHGRP. Moreover, such GHGs are not included in AR4; thus, using GWPs from other sources does not introduce inconsistencies for purposes of UNFCCC reporting.

The EPA is proposing to add chemical-specific and default GWPs to Table A–1 to balance and carry out the goals listed above as efficiently and effectively as possible. For the chemical-specific GWPs that would be added to Table A–1, we are proposing to rely on AR5 and, in one case, on AR4. For the default GWPs, we are proposing to rely on GWPs from AR5 and AR4, supplemented by consideration of atmospheric lifetimes and radiative efficiencies from the peer-reviewed literature.

a. General Approach to Chemical-Specific GWPs

For the fluorinated GHGs that do not have GWPs listed in AR4, but that do have GWPs listed in AR5, we are proposing through this action to adopt the chemical-specific GWPs in AR5. This approach would ensure that, for this set of GHGs, the GWPs used by the GHGRP would be consistent with the most recent international scientific consensus. As discussed above, in the final 2013 Revisions Rule, we adopted AR4 GWPs for the GHGs that were included in AR4. We noted that where reporting under the UNFCCC is linked to an older report (e.g., AR4 for the GHGs with GWPs listed in AR4), use of the GWPs from a newer report would introduce inconsistencies between the GWPs used in the GHGRP and those used in the U.S. Inventory of Greenhouse Gas Emissions and Sinks. However, where UNFCCC reporting is not linked to an older report, such inconsistencies are not a concern. In fact, adopting the AR5 GWPs would facilitate U.S. reporting under the UNFCCC Reporting Guidelines, which state: ''Annex I Parties are strongly encouraged to also report emissions and removals of additional GHGs, such as hydrofluoroethers (HFEs), perfluoropolyethers (PFPEs), and other gases for which 100-year global warming potential values are available from the IPCC but have not yet been adopted by the [Conference of the Parties to the UNFCCC].'' [9]

To list chemical-specific GWPs on Table A–1, the EPA believes that it is appropriate to require that these GWPs have been published in a peer-reviewed scientific journal. This helps to ensure that the data and methods used to evaluate the GWPs are consistent with current scientific good practice and thereby helps to ensure that the resulting GWPs are accurate. The EPA acknowledges that, in some cases, this will prevent the listing of GWPs that have not been published in the peer-reviewed literature but that may nevertheless be reasonably accurate. For example, eight of the GWPs discussed in the NODA and 11 of the GWPs that we proposed in the proposed 2013 Revisions Rule were supported by some data and analysis; however, we are not proposing these GWPs in this action because they have not been published in the peer-reviewed literature. We consider it important to adopt a clear, widely accepted criterion of scientific acceptance for including chemical-specific GWPs on Table A–1, which is intended to serve as the compendium of chemical-specific GWPs for the GHGRP. We believe that publication in a peer-reviewed scientific journal meets this standard.

The chief concern raised by requiring that chemical-specific GWPs on Table A–1 be peer-reviewed is that omission of a GWP that may be somewhat inaccurate could lead to the use of an effective GWP (zero) that is known to be very inaccurate. We believe that concern is addressed by the proposed establishment of default GWPs, discussed below.

Our proposal to adopt GWPs from a newer IPCC Assessment Report (AR5) for compounds not listed in the older IPCC Assessment Report required for UNFCCC reporting (AR4) is consistent with the approach we took in the original Table A–1. At the time we created the original Table A–1, the IPCC had already issued AR4, but the UNFCCC reporting guidelines required

[9] Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part I:UNFCCC reporting guidelines on annual greenhouse gas inventories, FCCC/CP/2013/10/Add.3.

use of the GWPs in the IPCC SAR for compounds listed in that report. As discussed above, the original Table A–1 included GWPs from the SAR for the GHGs that had GWPs in the SAR and GWPs from AR4 for the GHGs that did not have GWPs in the SAR but did in AR4 (e.g., NF_3). This ensured that the chemical-specific GWPs were both consistent with those used for UNFCCC reporting and as accurate and complete as practicable. Table A–1 also included a peer-reviewed GWP for a GHG that did not have a GWP in either the SAR or AR4 (sevoflurane). While we are not proposing in this action to add chemical-specific GWPs for GHGs that do not have a GWP in either of the most recent assessment reports, we may propose such additions in a future action.

b. General Approach To Default GWPs

Even with the addition of the AR5 GWPs, a significant share of the fluorinated GHG and HTF emissions and supplies reported under the GHGRP would not have chemical-specific GWPs included in Table A–1. We are proposing default GWPs to ensure that the atmospheric impacts of these fluorinated GHGs and HTFs are reflected in facility calculations and CO_2e emissions totals. Otherwise, an effective GWP of zero would continue to underestimate the atmospheric impacts of the fluorinated GHGs or HTFs emitted or supplied, which could lead to a significant underestimate of facility CO_2e emissions as a whole.

Such underestimates lead to inconsistencies between facilities and industries in terms of the completeness of the CO_2e emissions calculated and reported. It is important for the EPA to assign GWPs to all GHGs in order to understand the potential impact of certain sectors and facilities, compare emissions, and provide consistency and transparency with respect to emissions across the program.

In addition to these benefits, establishing default GWPs would increase the long-term stability and predictability of the GWPs used under the GHGRP. As chemical-specific GWPs for GHGs were developed, peer reviewed, and added to Table A–1, the change from each default GWP to the chemical-specific GWP would likely be considerably smaller than the change from zero to the chemical-specific GWP. This would greatly reduce the magnitude of any future revisions to or inconsistencies in the time series of CO_2e emissions. At the same time, having a default GWP for each GHG may allow the EPA to update Table A–1 less frequently because the default would reduce the error in CO_2e estimates that presently arises from not having a chemical-specific GWP for that GHG on Table A–1.

2. Addition of Chemical-Specific GWPs for 103 Compounds and Update of GWP for Sevoflurane

We are proposing to amend Table A–1 to Subpart A of Part 98 to add peer-reviewed GWPs for the 103 compounds listed in Table 2 of this preamble. To reflect the latest scientific consensus regarding fluorinated GHGs that do not have GWPs in AR4, we are proposing to adopt the GWPs provided for 102 of these 103 compounds in Table 8.A.1 of AR5.[10]

TABLE 2—CHEMICAL-SPECIFIC GWPS PROPOSED FOR ADDITION TO TABLE A–1

Common or trade name	Chemical name(s)	CAS No.	Chemical formula	AR5 GWP (100 year)
Saturated HFCs				
HFC-227ca	1,1,1,2,2,3,3-Heptafluoropropane	2252–84–8	$CF_3CF_2CHF_2$	2640
HFC-245cb	1,1,1,2,2-Pentafluoropropane	1814–88–6	$CF_3CF_2CH_3$	4620
HFC-245ea	1,1,2,3,3-Pentafluoropropane	24270–66–4	$CHF_2CHFCHF_2$	235
HFC-245eb	1,1,1,2,3-Pentafluoropropane	431–31–2	$CH_2FCHFCF_3$	290
HFC-263fb	1,1,1-Trifluoropropane	421–07–8	$CH_3CH_2CF_3$	76
HFC-272ca	2,2-Difluoropropane	420–45–1	$CH_3CF_2CH_3$	144
HFC-329p	1,1,1,2,2,3,3,4,4-Nonafluorobutane	375–17–7	$CHF_2CF_2CF_2CF_3$	2360
Saturated PFCs				
PFC-6-1-12	Hexadecafluoroheptane	335–57–9	C_7F_{16}; $CF_3(CF_2)_5CF_3$	7820
PFC-7-1-18	Octadecafluorooctane	307–34–6	C_8F_{18}; $CF_3(CF_2)_6CF_3$	7620
	Perfluorodecalin (cis)	60433–11–6	Z-$C_{10}F_{18}$	7240
	Perfluorodecalin (trans)	60433–12–7	E-$C_{10}F_{18}$	6290
Saturated HFEs Partially Segregated HFEs				
HFE-263m1; R-E-143a	1,1,2,2-Tetrafluoro-1-(trifluoromethoxy)ethane	690–22–2	$CF_3OCH_2CH_3$	29
HFE-365mcf2	1-Ethoxy-1,1,2,2,2-pentafluoroethane	22052–81–9	$CF_3CF_2OCH_2CH_3$	58
HG'-01	1,1,2,2-Tetrafluoro-1,2-dimethoxyethane	73287–23–7	$CH_3OCF_2CF_2OCH_3$	222
HG'-02	1,1,2,2-Tetrafluoro-1-methoxy-2-(1,1,2,2-tetrafluoro-2-methoxyethoxy)ethane.	485399–46–0	$CH_3O(CF_2CF_2O)_2CH_3$	236
HG'-03	3,3,4,4,6,6,7,7,9,9,10,10-Dodecafluoro-2,5,8,11-tetraoxadodecane.	485399–48–2	$CH_3O(CF_2CF_2O)_3CH_3$	221
	Difluoro(methoxy)methane	359–15–9	CH_3OCHF_2	144
	2-Chloro-1,1,2-trifluoro-1-methoxyethane	425–87–6	CH_3OCF_2CHFCl	122
	1-Ethoxy-1,1,2,2,3,3,3-heptafluoropropane	22052–86–4	$CF_3CF_2CF_2OCH_2CH_3$	61
	2-Ethoxy-3,3,4,4,5-pentafluorotetrahydro-2,5-bis [1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-furan.	920979–28–8	$C_{12}H_5F_{19}O_2$	56
	1-Ethoxy-1,1,2,3,3,3-hexafluoropropane	380–34–7	$CF_3CHFCF_2OCH_2CH_3$	23
	Fluoro(methoxy)methane	460–22–0	CH_3OCH_2F	13

[10] The EPA had previously proposed GWPs for 15 of these compounds in the proposed 2013 Revisions Rule, but since that rule was proposed, updated GWPs for these 15 compounds have been published in AR5. The other 11 compounds for which we proposed GWPs in the proposed 2013 Revisions Rule have not had GWPs published in the peer-reviewed literature; under this proposed rule, these compounds would be assigned default GWPs. A table specifying these chemicals and showing the default GWPs that would be assigned to them (as well as the chemicals whose cited GWPs were listed in the NODA) is available in the docket for this rulemaking.

TABLE 2—CHEMICAL-SPECIFIC GWPS PROPOSED FOR ADDITION TO TABLE A–1—Continued

Common or trade name	Chemical name(s)	CAS No.	Chemical formula	AR5 GWP (100 year)
	1,1,2,2-Tetrafluoro-3-methoxy-propane; Methyl 2,2,3,3-tetrafluoropropyl ether.	60598–17–6	$CHF_2CF_2CH_2OCH_3$	0.49
Non-Segregated HFEs				
HCFE-235ca2; enflurane	2-Chloro-1-(difluoromethoxy)-1,1,2-trifluoroethane.	13838–16–9	CHF_2OCF_2CHFCl	583
HFE-236ca	1-(Difluoromethoxy)-1,1,2,2-tetrafluoroethane	32778–11–3	$CHF_2OCF_2CHF_2$	4240
HFE-329me3	1,1,1,2,3,3-Hexafluoro-3-(trifluoromethoxy)propane.	428454–68–6	$CF_3CFHCF_2OCF_3$	4550
HFE-347mmz1; Sevoflurane	2-(Difluoromethoxy)-1,1,1,3,3,3-hexafluoropropane.	28523–86–6	$(CF_3)_2CHOCHF_2$	216
HFE-356mff2	bis(2,2,2-trifluoroethyl) ether	333–36–8	$CF_3CH_2OCH_2CF_3$	17
HG-02	1-(Difluoromethoxy)-2-(2-(difluoromethoxy)-1,1,2,2-tetrafluoroethoxy)-1,1,2,2-tetrafluoroethane.	205367–61–9	$HF_2C-(OCF_2CF_2)_2-OCF_2H$	2730
HG-03	1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-Hexadecafluoro-2,5,8,11-tetraoxadodecane.	173350–37–3	$HF_2C-(OCF_2CF_2)_3-OCF_2H$	2850
HG-20	(Difluoromethoxy)((difluoromethoxy) difluoromethoxy) difluoromethane.	249932–25–0	$HF_2C-(OCF_2)_2-OCF_2H$	5300
HG-21	1,1,3,3,5,5,7,7,8,8,10,10-Dodecafluoro-2,4,6,9-tetraoxadecane.	249932–26–1	$HF_2C-OCF_2CF_2OCF_2OCF_2O-CF_2H$	3890
HG-30	1,1,3,3,5,5,7,7,9,9-Decafluoro-2,4,6,8-tetraoxanonane.	188690–77–9	$HF_2C-(OCF_2)_3-OCF_2H$	7330
	1,1,1,2,2,3,3-Heptafluoro-3-(1,2,2,2-tetrafluoroethoxy)-propane.	3330–15–2	$CF_3CF_2CF_2OCHFCF_3$	6490
	1,1'-Oxybis[2-(difluoromethoxy)-1,1,2,2-tetrafluoroethane.	205367–61–9	$HCF_2O(CF_2CF_2O)_2CF_2H$	4920
	1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-hexadecafluoro-2,5,8,11-Tetraoxadodecane.	173350–37–3	$HCF_2O(CF_2CF_2O)_3CF_2H$	4490
	1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12,13,13,15,15-eicosafluoro-2,5,8,11,14-Pentaoxapentadecane.	173350–38–4	$HCF_2O(CF_2CF_2O)_4CF_2H$	3630
	1,1,2-Trifluoro-2-(trifluoromethoxy)-ethane	84011–06–3	$CHF_2CHFOCF_3$	1240
	1,1,2,2-Tetrafluoro-1-(fluoromethoxy)ethane	37031–31–5	$CH_2FOCF_2CF_2H$	871
	Trifluoro (fluoromethoxy) methane	2261–01–0	CH_2FOCF_3	751
	Difluoro(fluoromethoxy)methane	461–63–2	CH_2FOCHF_2	617
	Fluoro (fluoromethoxy) methane	462–51–1	CH_2FOCH_2F	130
Unsaturated Compounds Unsaturated HFCs and Unsaturated HCFCs				
HFC-1132a; VF2	vinylidiene fluoride	75–38–7	$C_2H_2F_2$, $CF_2=CH_2$	0.04
HFC-1141; VF	vinyl fluoride	75–02–5	C_2H_3F, $CH_2=CHF$	0.02
(E)-HFC-1225ye	(E)-1,2,3,3,3-Pentafluoroprop-1-ene	5595–10–8	$CF_3CF=CHF(E)$	0.06
(Z)-HFC-1225ye	(Z)-1,2,3,3,3-Pentafluoroprop-1-ene	5528–43–8	$CF_3CF=CHF(Z)$	0.22
Solstice 1233zd(E)	trans-1-chloro-3,3,3-trifluoroprop-1-ene	102687–65–0	$C_3H_2ClF_3$; $CHCl=CHCF_3$	1.34
HFC-1234yf; HFO-1234yf	2,3,3,3-Tetrafluoroprop-1-ene	754–12–1	$C_3H_2F_4$; $CF_3CF=CH_2$	0.31
HFC-1234ze(E)	(E)-1,3,3,3-Tetrafluoroprop-1-ene	1645–83–6	$C_3H_22F_4$; cis-CF3CH=CHF	0.97
HFC-1234ze(Z)	(Z)-1,3,3,3-Tetrafluoroprop-1-ene	29118–25–0	$C_3H_2F_4$; trans-$CF_3CH=CHF$; $CF_3CH=CHF(Z)$	0.29
HFC-1243zf; TFP	trifluoro propene (TFP); 3,3,3-Trifluoroprop-1-ene.	677–21–4	$C_3H_3F_3$,$CF_3CH=CH_2$	0.12
(Z)-HFC-1336	(Z)-1,1,1,4,4,4-Hexafluorobut-2-ene	692–49–9	$CF_3CH=CHCF_3(Z)$	1.58
HFO–1345zfc	3,3,4,4,4-Pentafluorobut-1-ene	374–27–6	$C_2F_5CH=CH_2$	0.09
Capstone 42-U	perfluorobutyl ethene (42-U); 3,3,4,4,5,5,6,6,6-Nonafluorohex-1-ene.	19430–93–4	$C_6H_3F_9$,$CF_3(CF_2)_3CH=CH_2$	0.16
Capstone 62-U	perfluorohexyl ethene (62-U); 3,3,4,4,5,5,6,6,7,7,8,8,8-Tridecafluorooct-1-ene.	25291–17–2	$C_8H_3F_{13}$,$CF_3(CF_2)_5CH=CH_2$	0.11
Capstone 82-U	perfluorooctyl ethene (82-U); 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-Heptadecafluorodec-1-ene.	21652–58–4	$C_{10}H_3F_{17}$,$CF_3(CF_2)_7CH=CH_2$	0.09
Unsaturated PFCs				
PFC-1114; TFE	tetrafluoroethylene (TFE); Perfluoroethene	116–14–3	$CF_2=CF_2$; C_2F_4	0.004
PFC-1216; Dyneon HFP	hexafluoropropylene (HFP); Perfluoropropene	116–15–4	C_3F_6; $CF_3CF=CF_2$	0.05
PFC C-1418	Perfluorocyclopentene; Octafluorocyclopentene	559–40–0	c-C_5F_8	1.97
	Perfluorobut-2-ene	360–89–4	$CF_3CF=CFCF_3$	1.82
	Perfluorobut-1-ene	357–26–6	$CF_3CF_2CF=CF_2$	0.10
	Perfluorobuta-1,3-diene	685–63–2	$CF_2=CFCF=CF_2$	0.003
Unsaturated Halogenated Ethers				
PMVE; HFE-216	perfluoromethyl vinyl ether (PMVE)	1187–93–5	$CF_3OCF=CF_2$	0.17
Fluoroxene	(2,2,2-Trifluoroethoxy) ethene	406–90–6	$CF_3CH_2OCH=CH_2$	0.05

TABLE 2—CHEMICAL-SPECIFIC GWPS PROPOSED FOR ADDITION TO TABLE A–1—Continued

Common or trade name	Chemical name(s)	CAS No.	Chemical formula	AR5 GWP (100 year)
Other Short-Lived Compounds				
Ketones				
Novec 1230	FK–5–1–12 Perfluoroketone; FK–5–1–12myy2; perfluoro(2-methyl-3-pentanone).	756–13–8	$CF_3CF_2C(O)CF(CF3)_2$	0.1
Fluorinated Aldehydes				
	3,3,3-Trifluoro-propanal	460–40–2	CF_3CH_2CHO	0.01
Fluorotelomer Alcohols				
	3,3,4,4,5,5,6,6,7,7,7-Undecafluoroheptan-1-ol	185689–57–0	$CF_3(CF_2)_4CH_2CH_2OH$	0.43
	3,3,3-Trifluoropropan-1-ol	2240–88–2	$CF_3CH_2CH_2OH$	0.35
	3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-Pentadecafluorononan-1-ol.	755–02–2	$CF_3(CF_2)_6CH_2CH_2OH$	0.33
	3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-Nonadecafluoroundecan-1-ol.	87017–97–8	$CF_3(CF_2)_8CH_2CH_2OH$	0.19
Compounds including one or more carbon-iodine bonds				
	Trifluoroiodomethane	2314–97–8	CF_3I	[a] 0.4
Other Compounds				
	Trifluoromethyl formate	85358–65–2	$HCOOCF_3$	588
	Perfluoroethyl formate	313064–40–3	$HCOOCF_2CF_3$	580
	1,2,2,2-Tetrafluoroethyl formate	481631–19–0	$HCOOCHFCF_3$	470
	Perfluorobutyl formate	197218–56–7	$HCOOCF_2CF_2CF_2CF_3$	392
	Perfluoropropyl formate	271257–42–2	$HCOOCF_2CF_2CF_3$	376
	1,1,1,3,3,3-Hexafluoropropan-2-yl formate	856766–70–6	$HCOOCH(CF_3)_2$	333
Halon 1202	Dibromodifluoromethane	75–61–6	CBr_2F_2	231
	1,1,1,3,3,3-Hexafluoropropan-2-ol	920–66–1	$(CF_3)_2CHOH$	182
	Methyl carbonofluoridate	1538–06–3	$FCOOCH_3$	95
	Methyl 2,2,2-trifluoroacetate	431–47–0	CF_3COOCH_3	52
Halon-2311; Halothane	2-Bromo-2-chloro-1,1,1-trifluoroethane	151–67–7	$CHBrClCF_3$	41
	2,2,3,3,4,4,4-Heptafluorobutan-1-ol	375–01–9	C_3F_7CH2OH	34
	2,2,2-Trifluoroethyl formate	32042–38–9	$HCOOCH_2CF_3$	33
	1,1-Difluoroethyl 2,2,2-trifluoroacetate	1344118–13–3	$CF_3COOCF_2CH_3$	31
	Difluoromethyl 2,2,2-trifluoroacetate	2024–86–4	$CF_3COOCHF_2$	27
	1,1-Difluoroethyl carbonofluoridate	1344118–11–1	$FCOOCF_2CH_3$	27
	2,2,2-Trifluoroethanol	75–89–8	CF_3CH_2OH	20
	2,2,3,3,3-Pentafluoropropan-1-ol	422–05–9	$CF_3CF_2CH_2OH$	19
	2,2,3,4,4,4-Hexafluoro-1-butanol	382–31–0	$CF_3CHFCF_2CH_2OH$	17
	3,3,3-Trifluoropropyl formate	1344118–09–7	$HCOOCH_2CH_2CF_3$	17
	2,2,3,3,4,4,4-Heptafluoro-1-butanol	375–01–9	$CF_3CF_2CF_2CH_2OH$	16
	2,2,3,3-Tetrafluoro-1-propanol	76–37–9	$CHF_2CF_2CH_2OH$	13
	2,2,2-Trifluoroethyl 2,2,2-trifluoroacetate	407–38–5	$CF_3COOCH_2CF_3$	7
	Methyl 2,2-difluoroacetate	433–53–4	HCF_2COOCH_3	3
	2,2-Difluoroethanol	359–13–7	CHF_2CH2OH	3
	Perfluoroethyl acetate	343269–97–6	$CH_3COOCF_2CF_3$	2.1
	Trifluoromethyl acetate	74123–20–9	CH_3COOCF_3	2.0
	Perfluoropropyl acetate	1344118–10–0	$CH_3COOCF_2CF_2CF_3$	1.8
	Perfluorobutyl acetate	209597–28–4	$CH_3COOCF_2CF_2CF_2CF_3$	1.6
	Ethyl 2,2,2-trifluoroacetate	383–63–1	$CF_3COOCH_2CH_3$	1.3
	2-Fluoroethanol	371–62–0	CH_2FCH_2OH	1.1
	4,4,4-Trifluorobutan-1-ol	461–18–7	$CF_3(CH_2)_2CH_2OH$	0.05

[a] AR4.

In their compilation of the GWPs available in the scientific peer-reviewed literature for fluorinated GHGs, the authors of AR5 relied on the article ''Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review'' (hereinafter referred to as the ''Comprehensive Review'').[11] The Comprehensive Review refined and adjusted the GWPs that had been previously published for the fluorinated GHGs, for example updating them to reflect the most recent consensus absolute global warming potential of CO_2, to which all other GWPs are indexed. One set of adjustments is of particular interest for the 13 short-lived compounds for which the EPA previously proposed to add GWPs in the proposed 2013 Revisions Rule. These are adjustments to the radiative efficiencies of short-lived compounds to better account for the fact that such compounds are not well mixed in the atmosphere. As discussed in the proposed 2013 Revisions Rule, GWPs estimated for short-lived compounds are often based on the assumption that the compounds are well mixed in the atmosphere, and this assumption can lead to overestimated GWPs.[12] This expectation was

[11] Hodnebrog, Ø., M. Etminan, J.S. Fuglestvedt, G. Marston, G. Myhre, C.J. Nielsen, K.P. Shine, and T.J. Wallington. ''Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review,'' Reviews of Geophysics, Accepted manuscript online: 24 April 2013.

[12] However, as noted in the proposed 2013 Revisions Rule, the absolute error (i.e., error in total CO_2e) associated with this overestimate is expected to be small when the GWP itself is small, which is

Continued

confirmed by the adjustments made in the Comprehensive Review, which significantly lowered the estimated GWPs of the short-lived compounds compared to those that were proposed in the proposed 2013 Revisions Rule. The GWPs for short-lived compounds that we are proposing to adopt from AR5 reflect these adjustments.

AR5 expresses the GWPs of many short-lived compounds as ''<1.'' To allow calculations of CO_2e, which require a point estimate of each compound's GWP, we have calculated more precise GWPs for these compounds based on the radiative efficiencies and atmospheric lifetimes provided for the compounds in AR5. Table 2 of this preamble lists the precise GWPs. We are also considering the option of assigning a GWP of ''1'' to these compounds. While using a GWP of 1 would lead to an overestimate of CO_2e emissions, this overestimate would be extremely small in most cases, and using a GWP of 1 would simplify calculations. We specifically request comment on whether we should assign the precise GWP (e.g., 0.12 for trifluoropropene) or ''1'' in these cases.

The Supplementary Material to Chapter 8 of AR5 (Table 8.SM.16) includes another set of GWPs for the GHGs included in Table 8.A.1. These GWPs have been adjusted to reflect feedback mechanisms that increase the GWPs by between 10 and 22 percent, depending on the atmospheric lifetime of the GHG. Because the GWPs included in AR4 (and earlier IPCC Scientific Assessment Reports) did not include this adjustment, we are not proposing to adopt the set of GWPs in AR5 that includes it. This will retain as much comparability as practicable among the GWPs used in the GHGRP, given our interest in remaining consistent with the GWPs used for UNFCCC reporting (i.e., the AR4 GWPs for the GHGs with GWPs in AR4).

For one fluorinated GHG, trifluoroiodomethane (CF_3I), we are proposing to add a chemical-specific GWP from AR4. This GWP is 0.4. (There is no GWP for trifluoroiodomethane in AR5.) The GWP for trifluoroiodomethane was inadvertently omitted from earlier versions of Table A–1.

We are also proposing to update the GWP of sevoflurane, a hydrofluoroether that is used as an anesthetic. As noted above, the GWP for sevoflurane that is currently in Table A–1 (345) is based on a 1999 paper from the peer-reviewed literature because no IPCC report (including AR4) had included a GWP for sevoflurane when Part 98 was first promulgated. In today's action, we are proposing to adopt the GWP provided for sevoflurane in AR5 (216), which is more accurate and reflects the current international scientific consensus.

To make Table A–1 easier to use while accommodating the additional chemical-specific GWPs, we are proposing to reorganize the chemical-specific GWPs on Table A–1 by fluorinated GHG group and/or subgroup. These fluorinated GHG groups and subgroups are the same as those discussed as the basis for the proposed default GWPs in section II.C.3. of this preamble. The reorganized Table A–1 appears in the proposed regulatory text.

3. Addition of Default GWPs for Fluorinated GHGs That Do Not Have Chemical-Specific GWPs on Table A–1

The EPA is proposing eight default GWP values based on fluorinated GHG group. These default GWPs would be added to Table A–1 and would apply to fluorinated GHGs and HTFs not otherwise listed on Table A–1. The proposed fluorinated GHG groups are: (1) Fully fluorinated GHGs and HTFs, (2) saturated hydrofluorocarbons (HFCs), (3) partially segregated saturated HFEs and hydrochlorofluoroethers (HCFEs), (4) non-segregated saturated HFEs and HCFEs, (5) unsaturated perfluorocarbons (PFCs), unsaturated HFCs, unsaturated hydrochlorofluorocarbons (HCFCs), unsaturated ethers, unsaturated halogenated esters, and fluorinated ketones, (6) fluorotelomer alcohols, (7) fluorinated GHGs with carbon-iodine bonds, and (8) other GHGs and HTFs. For each fluorinated GHG group, we are basing the proposed default GWPs on the average of the chemical-specific GWPs of chemicals that belong to that group and that are either on Table A–1 or are proposed to be added to Table A–1 under this proposed rule. The proposed fluorinated GHG groups and associated GWPs are listed in Table 3 of this preamble.

TABLE 3—DEFAULT GWPS PROPOSED FOR ADDITION TO TABLE A–1

Fluorinated GHG group	Proposed GWP (100-year)
Fully fluorinated GHGs	10,000
Saturated hydrofluorocarbons (HFCs)	2,200
Partially segregated saturated HFEs and HCFEs	200
Non-segregated saturated HFEs and HCFEs	2,400
Unsaturated PFCs, unsaturated HFCs, unsaturated HCFCs, unsaturated halogenated ethers, unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones	1
Fluorotelomer alcohols	1
Fluorinated GHGs with carbon-iodine bond(s)	1
Other fluorinated GHGs	110

a. Fluorinated GHG Groups

The fluorinated GHG groups are based primarily on chemical structure, which is correlated with atmospheric lifetime and GWP. Thus, within each group, GWPs fall into a relatively limited range, and among the groups, GWPs vary significantly. This permits default GWPs to be established with more precision than is possible with larger or more diverse sets of fluorinated GHGs.

In proposing these groups, the EPA has taken into consideration the comments received on the default GWPs that were proposed for purposes of reporting emissions under subpart L. We proposed five fluorinated GHG groups and associated default GWPs in the proposed amendments to subpart L, including (1) fully fluorinated GHGs and HTFs, (2) saturated HFCs, (3) saturated HFEs and saturated HCFEs, (4) unsaturated PFCs, unsaturated HFCs, unsaturated HCFCs, unsaturated HFEs, and fluorinated ketones, and (5) other GHGs and HTFs. Commenters requested that we split the third group, expand the

generally the case for GHGs with atmospheric lifetimes of a few days or weeks (78 FR 19813).

fourth group, and add two additional groups, fluorotelomer alcohols and fluorinated GHGs with carbon-iodine bonds, to increase the precision and accuracy of the default GWPs applied to the chemicals in these groups. The commenters stated that five types of chemicals, including unsaturated fluorinated ethers, unsaturated halogenated esters, fluorinated aldehydes, fluorotelomer alcohols, and fluorinated GHGs with carbon-iodine bonds, would have been assigned GWPs that were too high if they had remained in the ''Other'' category. They further stated that two types of saturated HFEs and HCFEs would have been assigned GWPs that were, on average, either too high (for partially segregated saturated HFEs and HCFEs) or too low (for non-segregated saturated HFEs and HCFEs). We agree with these comments and are consequently including the suggested additional fluorinated GHG groups and associated default GWPs in this proposed rule.[13] We are also revising the group of unsaturated compounds to include unsaturated fluorinated ethers, unsaturated halogenated esters, and fluorinated aldehydes.

The definitions and characteristics of each fluorinated GHG group are discussed below:

Fully fluorinated GHGs. Fully fluorinated GHGs are fluorinated GHGs that contain only single bonds and in which all available valence locations are filled by fluorine atoms. This group includes but is not limited to saturated perfluorocarbons; SF_5CF_3; fully fluorinated linear, branched and cyclic alkanes; fully fluorinated ethers; fully fluorinated tertiary amines; fully fluorinated aminoethers; and perfluoropolyethers. As discussed further below, for purposes of establishing a default GWP, we are proposing to exclude NF_3 and SF_6 from the group as we did in the proposed amendments to subpart L. The remaining fully fluorinated GHGs for which data are available have lifetimes of over 500 to several thousand years and GWPs of 6,290 to 17,700.

Saturated hydrofluorocarbons. This group would include HFCs that contain only single bonds (i.e., hydrofluoroalkanes such as HFC–134a). Saturated HFCs have lifetimes from 0.3 years to 270 years and GWPs from 12 to 14,800. The average GWP of saturated HFCs is approximately 2,200, the default GWP that we would assign to this group. Because the range of lifetimes and GWPs spanned by the saturated HFCs is quite large, we are also considering the option of establishing two default GWPs for HFCs: One for shorter-lived HFCs and one for longer-lived HFCs. This would provide more precise information regarding the atmospheric behavior of each group. For example, the average GWP of the saturated HFCs with atmospheric lifetimes above 20 years is approximately 5,700, while the average GWP of the saturated HFCs with atmospheric lifetimes below 20 years is approximately 600. However, the drawback of establishing default GWPs by atmospheric lifetime is that it requires reporters to know the atmospheric lifetimes of the HFCs to which the default GWPs would be applied. This information is not likely to be available for many HFCs that are not on Table A–1. The EPA specifically requests comment on the option of establishing different GWPs for short- and longer-lived HFCs. We also request comment on the option of establishing GWPs for HFCs based on the number of carbon-hydrogen bonds in the molecule, an option discussed in more detail for HFEs below and in ''Analysis of Atmospheric Lifetimes, Radiative Efficiencies, and Global Warming Potentials of Saturated Hydrofluoroethers by Number of Carbon-Hydrogen and Carbon-Fluorine Bonds,'' (available in Docket EPA–HQ–OAR–2009–0927), which includes an analysis of the relationship between the number of carbon-hydrogen bonds and GWPs in HFCs.

Non-segregated saturated HFEs and HCFEs. This group would include HFEs and HCFEs that contain only single bonds and include fluorine substitutes on all alkyl groups (e.g., HFE–134). This group and the partially segregated saturated HFEs and HCFEs, discussed below, are based on chemical structure and break the set of saturated HFEs and HCFEs into two smaller sets with relatively limited ranges of atmospheric lifetimes and GWPs. HFEs and HCFEs in this category have atmospheric lifetimes ranging from less than 1 year to 136 years and GWPs ranging from 11 to 14,900. Although there is a significant difference between the highest and lowest GWPs in this group, most compounds in the group have GWPs of more than 500. The average GWP of the group is 2,400, the default GWP that we would assign to this group.

Partially segregated saturated HFEs and HCFEs. This group would include HFEs and HCFEs that contain only single bonds as well as at least one fully hydrogenated alkyl group with no fluorine or chlorine substitutes (e.g., HFE–356mm1). HFEs and HCFEs in this category have atmospheric lifetimes from a few weeks to 5.2 years and GWPs from 0.5 to 756. Most compounds in this category have GWPs below 500. The average GWP of the group is 200, the default GWP that we would assign to this group.

A 2008 study suggested that the number of carbon-hydrogen (C–H) bonds in saturated HFEs was a better predictor of their atmospheric lifetimes, and therefore GWPs, than whether the HFEs were non-segregated or partially segregated.[14] Based on our analysis, dividing the set of HFEs and HCFEs into two or more groups based on the number of C–H bonds could increase the accuracy and precision of the associated default GWPs compared to dividing the HFEs and HCFEs into the non-segregated and partially segregated groups.[15] We specifically request comment on the option of basing default GWPs for HFEs and HCFEs on the number of C–H bonds in the molecule.

Unsaturated PFCs, unsaturated HFCs, unsaturated HCFCs, unsaturated halogenated ethers, unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones. This group would include very short-lived compounds including unsaturated PFCs (e.g., hexafluoropropylene and tetrafluoroethylene), unsaturated HFCs (e.g., HFC–1234yf and perfluorobutyl ethene), unsaturated HCFCs, unsaturated halogenated ethers (e.g., fluoroxene), unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones. These GHGs have lifetimes of a few days to weeks. The average GWPs of the subgroups, where they have been evaluated, range from 0.01 to 0.7. The average GWP for the group is 0.4, but we are proposing to assign a default GWP of one to simplify calculations. Using a default GWP of one would lead to an overestimate of CO_2e emissions, but this overestimate would be extremely small in most cases. We specifically request comment on this approach.

While multiple studies have indicated that unsaturated PFCs and unsaturated HFCs have low GWPs, fewer studies have evaluated GWPs for unsaturated HCFCs, unsaturated fluorinated ethers, fluorinated aldehydes, and fluorinated

[13] The analysis supporting the proposed default GWPs, ''Revised Analysis of Potential Default GWPs for Fluorinated GHGs Reported Under the GHGRP,'' is available in Docket EPA–HQ–OAR–2009–0927.

[14] Blowers, P., D.M. Moline, K.F. Tetrault, R.R. Wheeler, and S.L. Tuchawena. 2008. Global Warming Potentials of Hydrofluoroethers. Environ. Sci. Technol. 42, 1301–1307.

[15] ''Analysis of Atmospheric Lifetimes, Radiative Efficiencies, and Global Warming Potentials of Saturated Hydrofluoroethers by Number of Carbon-Hydrogen and Carbon-Fluorine Bonds,'' available in Docket EPA–HQ–OAR–2009–0927.

ketones.[16] Thus, the GWPs of these subgroups are less certain. The EPA specifically requests comment on the likely variability of the lifetimes and GWPs of unsaturated HCFCs, unsaturated fluorinated ethers, fluorinated aldehydes, and fluorinated ketones and on whether or not these compounds should be included in the very-short-lived group or in the ''Other fluorinated GHG'' group, discussed below.

Although the EPA is not aware of any peer-reviewed studies that have evaluated GWPs for unsaturated fluorinated esters, the atmospheric behavior of saturated fluorinated esters and of other unsaturated compounds indicates that unsaturated fluorinated esters are likely to have low GWPs. The fluorinated esters with GWPs in AR5 (including the fluorinated acetates and formates) have GWPs ranging from 2 to 588, which is significantly lower than the ranges of GWPs for saturated HFCs and PFCs, respectively. This implies that the unsaturated esters are likely to have GWPs that are comparable to or lower than the GWPs of the unsaturated HFCs and PFCs. However, we are specifically requesting comment on whether this line of reasoning justifies the inclusion of unsaturated fluorinated esters in the same group as unsaturated HFCs and PFCs, to which we are proposing to assign a default GWP of one. The alternative group would be the ''Other Fluorinated GHG'' group, to which we are proposing to assign a default GWP of 110.

Fluorotelomer alcohols. This group includes saturated fluorinated compounds with the chemical formula CnF2n+1CH2CH2OH. Fluorotelomer alcohols have atmospheric lifetimes ranging from 2 to 3 weeks and GWPs ranging from 0.2 to 0.4. Their average GWP is 0.3. We are proposing a default GWP of one for this group; however, as for the unsaturated compounds discussed above, we particularly request comment on assigning a GWP equal to the average GWP of the group.

Fluorinated GHGs with carbon-iodine bonds. Fluorinated GHGs with carbon-iodine bonds have very short atmospheric lifetimes. AR4 included an atmospheric lifetime of 2 days and a GWP of 0.4 for one member of this group, CF3I. Peer-reviewed studies on other members of this group have found similarly brief atmospheric lifetimes but have not assigned GWPs. We are proposing a default GWP of one for this group.

Other fluorinated GHGs. This group includes the fluorinated GHGs that do not fall into any of the seven sets defined above. To ensure that the gas groups are both distinct (i.e., do not overlap) and comprehensive (i.e., cover all fluorinated GHGs), this gas group is a catch-all for any remaining fluorinated GHGs. Based on the list of compounds and GWPs included in AR5, the EPA's understanding is that this group would consist of saturated fluorinated acetates, saturated fluorinated formates, carbonofluoridates, and fluorinated alcohols (other than fluorotelomer alcohols) with lifetimes ranging from a few weeks to a few years and GWPs ranging from less than 5 to the hundreds. The EPA specifically requests comment on which chemicals would fall into this group and on their atmospheric lifetimes and GWPs. We are proposing a default GWP of 110 for this group.

b. Calculation of Default GWPs

For each group, we have taken the average GWP of the group, rounding it to one or two significant figures.[17] For example, to determine the default GWP for fully fluorinated GHGs, we determined the average GWP of all fully fluorinated fluorocarbons in either Table A–1 or, for compounds not included in Table A–1, in AR5. The average GWP for the fully fluorinated fluorocarbons is equal to 9,857. This provided the default GWP of 10,000 for fully fluorinated compounds.

This approach is expected to result in an unbiased estimate of the GWP of each fluorinated GHG group because, at the present time, the GWPs of the fluorinated GHGs on Table A–1 are not expected to be any lower or higher, on average, than the GWPs of the fluorinated GHGs that are not on Table A–1. However, for the ''Other fluorinated GHGs'' group, which is a ''catch-all'' category for fluorinated GHGs that do not fit into any other group, it is possible that newly synthesized types of compounds could have GWPs significantly different from the GWPs of the types of compounds that are currently in the group. Given this uncertainty, we are specifically requesting comment on an alternative option. This option would be to adopt a default GWP for this group based on the average of the GWPs of all fluorinated GHGs (i.e., 2000). This would recognize that the uncertainty associated with the GWPs of newly synthesized compound types may exceed that associated with the GWPs of the compound types currently identified as belonging to the ''other fluorinated GHGs'' group. However, while adopting a GWP of 2000 would decrease the likelihood of underestimating the GWPs of new types of compounds, it would significantly overestimate the GWPs of the compound types that have been identified to date as belonging to this group.

The EPA also requests comment on the sets of chemicals selected as the bases for the default GWPs. First, we are specifically requesting comment on the fluorinated GHG groups proposed here. Do they capture most of the variability in GWPs exhibited by fluorinated GHGs? If not, please explain (1) what alternative fluorinated GHG groups would capture this variability, and (2) whether facilities could easily determine to which fluorinated GHG group a particular fluorinated compound belonged.

Second, we are requesting comment on the individual chemicals whose GWPs are used to establish GWPs for each fluorinated GHG group. We are specifically interested in comments on how to treat compounds with relatively high or low GWPs for their groups (i.e., outliers). Within the group of fully fluorinated GHGs, relatively high GWPs are generally a consequence of a compound's radiative efficiency (or, more precisely, the ratio of the compound's radiative efficiency to its molecular weight), which is in turn influenced by the compound's inclusion of bonds other than C–F bonds (e.g., S–F or N–F bonds in SF_6, SF_5CF_3, and NF_3) or by a cyclic structure (as for c-C_3F_6). Within the other fluorinated GHG groups, relatively high-GWP compounds are those that are relatively long-lived, such as HFC–23 among the saturated HFCs and HFE–125 and HFE–

[16] However, at least one study found that a number of fluorinated ketones and fluorinated aldehydes had brief atmospheric lifetimes (several days) (Derwent, R.G. 1995. ''Sources, Distributions, and Fates of VOCs in the Atmosphere.'' *Issues in Environmental Science and Technology,* 4. pp 1–16.) All the fluorinated GHGs that have GWPs in AR5 and that have atmospheric lifetimes of less than two weeks have GWPs of less than one.

[17] The number of significant figures to which the average GWPs were rounded depended on the relative and absolute errors associated with that number of significant figures. In general, GWPs were rounded to two significant figures when the average GWP was greater than 100, reflecting uncertainties in the average of a few percent. One exception was the rounded average GWP for fully fluorinated fluorocarbons, which was rounded to one significant figure (10,000) rather than two (9,900) because the uncertainty associated with the second figure (i.e., ±100) is only about one percent of the average GWP for the group. Rounding the average for the fully fluorinated fluorocarbons to the nearest 100 (9,900) would understate the uncertainty associated with the default and result in a less robust default that would be more sensitive to small changes in the set of GWPs used to calculate the default. GWPs of less than one were rounded to one decimal place because, for the affected gases, the absolute error in CO_2e emissions that is associated with this rounding is expected to be small.

134 among the saturated HFEs, while relatively low-GWP compounds are those that are short-lived, such as HFC–152a among the saturated HFCs.

To develop the proposed defaults, we have included outliers where we could not rule out the possibility that such outliers may also occur among the fluorinated GHGs whose GWPs we wish to estimate through the use of defaults. Thus, to estimate the default GWP for fully fluorinated GHGs, the EPA did not include SF_6 or NF_3, because the definition of ''fluorinated GHG'' does not include any other compounds whose radiatively important bonds consist exclusively of S–F or N–F bonds. However, we did include SF_5CF_3, because the definition of ''fluorinated GHG'' does include fluorocarbons, which may include S–F and N–F bonds in addition to C–F bonds. We also included cyclic fluorinated GHGs for the same reason. An analysis of how the default GWPs change based on the inclusion or exclusion of outliers is included in the docket for this rulemaking. For fully fluorinated GHGs, the inclusion of SF_6 and NF_3 would increase the default from 10,000 to 11,000, while the exclusion of c-C_3F_6 and SF_5CF_3 (numerical outliers) would decrease the default to 9,000.

We are also specifically requesting comment on whether fluorinated GHGs that contain chlorine should be included in the ''other fluorinated GHG'' group or in the fluorinated GHG groups in which chemically similar fluorinated GHGs that do not contain chlorine are included. While most chlorine-containing GHGs are regulated under the EPA's Stratospheric Ozone Protection Regulations at 40 CFR part 82, subpart A and are therefore excluded from the definition of ''fluorinated GHG'' under the GHG Reporting Rule (and the requirements of subpart L), some chlorine-containing GHGs are included in the definition of ''fluorinated GHG.'' These include, for example, a few HCFEs and unsaturated HCFCs. In the future, facilities may emit other chlorine-containing fluorinated GHGs (e.g., unsaturated chlorofluorocarbons (CFCs) and unsaturated hydrobromofluorocarbons). In developing the proposed default GWPs, we have included current chlorine-containing fluorinated GHGs in the same groups as similar fluorinated GHGs without chlorine (grouping HCFEs with HFEs and unsaturated HCFCs with unsaturated HFCs), because the atmospheric lifetimes and GWPs of the chlorine-containing compounds are similar to those of the similar compounds without chlorine. The alternative would be to include the chlorine-containing compounds in the ''Other fluorinated GHGs'' group, but this approach would lead to the use of less accurate default GWPs for the chlorine-containing compounds.

In addition, we are specifically requesting comment on the option of calculating the default GWPs based on the AR5 GWPs for the chemicals in each group. As discussed above, our preferred approach is to calculate the default GWPs based on the chemical-specific GWPs that would appear in Table A–1 as amended by this rule, that is, on a combination of AR4 GWPs (for the fluorinated GHGs that have AR4 GWPs) and AR5 GWPs (for the fluorinated GHGs that do not have AR4 GWPs). This approach would provide consistency between the default GWPs and the chemical-specific GWPs on Table A–1. However, for some fluorinated GHGs (e.g., many HFEs), the AR5 GWPs are significantly different from the AR4 GWPs. While it would be inconsistent with UNFCCC reporting guidelines to use AR5 GWPs as the chemical-specific GWPs for fluorinated GHGs that have AR4 GWPs, it would not be inconsistent with UNFCCC guidelines to use those chemical-specific AR5 GWPs to set defaults. This is because the UNFCCC does not provide guidance regarding which GWPs to use for GHGs that have not had GWPs published in IPCC reports (i.e., the GHGs to which default GWPs would be applied). AR5 reflects the most current scientific understanding of the atmospheric lifetimes and/or radiative behavior of GHGs. Basing defaults on these newly assigned GWPs would increase the accuracy and the long-term robustness of the defaults, particularly for the non-segregated and partially segregated saturated HFE groups.

4. Revised Definition of ''Global Warming Potential''

We are also proposing to revise the definition of ''global warming potential'' in subpart A to clarify how chemical-specific and default GWPs would be selected and applied for purposes of the calculations in Part 98. This clarification states that the chemical-specific GWPs in Table A–1 would be required to be applied to GHGs that had chemical-specific GWPs listed in Table A–1, while the default GWPs in Table A–1 would be required to be applied to fluorinated GHGs that did not have chemical-specific GWPs listed in Table A–1. This would help to ensure that chemical-specific and default GWPs were applied correctly and consistently in CO_2e calculations across Part 98.

5. Special Provisions for Facilities and Suppliers That Become Newly Subject to One or More Subparts of Part 98 Due to the Addition of GWPs

As discussed further in Section III.B of this preamble, we do not anticipate that finalizing the GWPs proposed in this action would expand the set of facilities required to report under the Greenhouse Gas Reporting rule. However, to allow for the possibility that some facilities or suppliers could become newly subject to one or more subparts of Part 98 due to the addition of the GWPs, we are proposing special provisions for these facilities regarding the timing of reporting and the use of best available monitoring methods (BAMM). These provisions would be identical to the equivalent provisions for facilities and suppliers that became newly subject to one or more subparts due to the update of GWPs in the 2013 Revisions Rule, 40 CFR 98.3(k) and (l). To implement this approach, we are proposing to revise 40 CFR 98.3(k) and (l) to delete most references to particular years and replace these with references based on the year during which the changes to the GWPs are promulgated.

D. Relationship Between This Proposed Rule and Proposed Amendments to Subpart L

As discussed above, the EPA proposed a set of amendments to subpart L last November that would replace the two existing default GWPs in subpart L with five default GWPs (in a new Table L–1) for the calculations and reporting under that subpart. The EPA intends to finalize the proposed amendments to subpart L in time for reporting in calendar year 2015, which for subpart L reporters will include previously deferred detailed reporting of 2011 through 2013 emissions as well as of 2014 emissions. We also intend to finalize this proposed rule in time for reporting in calendar year 2015, probably after finalizing the amendments to subpart L. This would ensure that the chemical-specific GWPs that would be added under this action, which we did not propose to add under the amendments to subpart L, would apply to subpart L emissions for the entire time series. In addition, while we anticipate that the default GWPs finalized in Table L–1 under the amendments to subpart L would be the same as the default GWPs finalized in Table A–1 under this action, we intend to remove Table L–1 and the references to it when this rule is finalized. After these removals, subpart L would not include any subpart-specific default GWPs. This would simplify subpart L

and ensure future as well as current consistency among the default GWPs applied across Part 98.

E. Relationship Between This Proposed Rule and Default GWP in Subpart I

For purposes of certain calculations under subpart I, electronics facilities are required to use a default GWP of 2,000 for fluorinated GHGs for which Table A–1 does not ''define'' or ''list'' a GWP value. These calculations include the preliminary calculation of stack system emissions at 40 CFR 98.93(i)(1) and (i)(2), the calculation of the relative standard deviation of stack emission factors at 40 CFR 98.94 (j)(5)(ii)(C), the calculation of the change in annual consumption of fluorinated GHGs at 40 CFR 98.94(j)(8)(i), the calculations of the effective destruction or removal efficiency at 40 CFR 98.96 (Equations I–26, I–27, and I–28), and the calculation of the approximate percentage of total GHG emissions consisting of emissions from research and development activities at 40 CFR 98.96(x). To clarify that the default GWPs that we are proposing to add to Table A–1 should be used for these calculations rather than the default GWP of 2,000, we are proposing to remove all references to the default GWP of 2,000 from subpart I. This would ensure that the GWPs used for the calculations in subpart I are consistent with those used for all other calculations and reporting under Part 98.

F. Calculation of Differences and Changes in CO_2e Quantities Under Subpart I and Subpart L

Both subpart I and subpart L include calculations that compare CO_2e parameters that are measured and/or calculated at different times. For example, under subpart I, facilities using the stack testing method must evaluate whether annual consumption of a fluorinated GHG has changed by more than 10 percent of the total annual fluorinated GHG consumption in CO_2e since the most recent emissions test. If it has, then the facility must re-test (40 CFR 98.94(j)(8)(i)). Under subpart L, facilities that plan a change to an operating scenario whose emission factor was measured must estimate and compare the emission calculation factors for the measured and changed scenarios. If the difference exceeds 15 percent, then the facility must re-test (40 CFR 98.124(c)(7)(ii)).

For purposes of these and similar calculations, facilities would use, for both the original and the updated parameters, the GWPs that are in the version of Table A–1 in effect at the time of the calculation. This would avoid the introduction of differences that are caused by differences in GWPs rather than by changes to production processes.

G. Relationship Between This Proposed Rule and GHG Permitting Requirements

EPA's stationary source permitting regulations incorporate Table A–1 to subpart A of 40 CFR part 98 to provide a method for calculating emissions of GHGs (in terms of CO_2e) in order to determine whether Prevention of Significant Deterioration (PSD) permitting requirements are applicable to an individual source. See 75 FR 31522, 40 CFR 51.166(b)(48)(ii)(a), 40 CFR 52.21(b)(49)(ii)(a). In the 2013 Revisions Rule, we explained how a change to a GWP relates to PSD permitting (78 FR 71914–71917). For example, we explained that in the case of a final PSD permit that is issued prior to the effective date of a GWP revision, the permit should continue to rely upon the GWPs that were in place at the time of permit issuance for purposes of demonstrating compliance with the conditions of the permit.

On June 23, 2014, the U.S. Supreme Court issued its decision in *Utility Air Regulatory Group* v. *EPA* (No. 12–1146). The Court said that EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit. The Court also said that PSD permits that are otherwise required (based on emissions of conventional pollutants) may continue to require limitations on greenhouse gas emissions based on the application of Best Available Control Technology (BACT). EPA is continuing to examine the implications of the Court's decision, including how EPA may need to revise its permitting regulations based on the Supreme Court decision. Nevertheless, because the Court decision upheld the PSD BACT requirement for GHGs under specific circumstances, EPA believes it is likely that its revised PSD permitting regulations would continue to incorporate Table A–1 GWPs to calculate CO_2e.

In the current version of Part 98, Table A–1 assigns chemical-specific GWPs for individual GHG compounds. It contains chemical-specific GWPs for carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, and several HFC and PFC compounds. However, not all HFC and PFC compounds are included in the current version of Table A–1. This proposed rule would add chemical-specific and default GWPs to Table A–1 for the remaining HFCs and PFCs that the current version of Table A–1 does not cover.

To the extent that Table A–1 GWPs continue to be used in permitting, as with the 2013 Revisions Rule, adoption of these chemical-specific and default GWPs may automatically apply in some state and local PSD programs, while some state and local agencies may have to engage in an adoption process to incorporate the revised Table A–1 into their program regulations.[18] In the 2013 Revisions Rule, EPA noted that some states would need to modify their PSD SIPs programs in order to make the revisions to Table A–1 effective in their permitting programs (78 FR 71916). As a result of the Supreme Court decision issued June 23, 2014, additional revisions to state PSD SIPs and title V programs may be necessary, but EPA has yet to determine the nature of any appropriate revisions to EPA's federal regulations that establish the minimum requirements for state PSD and title V programs.[19] EPA will provide more information on this subject in forthcoming actions by the Agency. To the extent necessary, we will address the procedures for states to adopt the revisions to Table A–1 in any subsequent action addressing that decision, which should allow states to make any necessary regulatory amendments at one time.

III. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735,

[18] For PSD, state and local permitting agencies handle the majority of GHG PSD permitting through either EPA-approved state rules, which generally incorporate the requirements from the Tailoring Rule provisions at 40 CFR 51.166 or 52.21, or through a delegation from the EPA in which the state issues PSD permits on behalf of the EPA using 40 CFR 52.21. Through its Regional Offices, the EPA issues PSD permits for areas not covered by an EPA-approved or delegated state permit program using 40 CFR 52.21.

[19] Similar to the PSD rules, EPA's title V permitting regulations have also incorporated Table A–1 to subpart A of 40 CFR part 98 to provide a method for calculating emissions of GHG (in terms of CO_2e). See 75 FR 31522, 40 CFR 70.2 (definition of ''subject to regulation''), 40 CFR 71.2 (same). As for PSD, the 2013 Revisions Rule also explained how a change to a GWP would relate to title V permitting, including in EPA-approved title V permitting programs implemented by state and local permitting authorities. 78 FR 71914–71917. EPA is still evaluating how, if at all, the Table A–1 GWPs will continue to be used in the title V permitting regulations in light of the Supreme Court's decision in *Utility Air Regulatory Group* v. *EPA*. EPA will provide further information in future actions as appropriate.

October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not increase information collection burden. The proposed addition of GWPs to subpart A is not expected to affect the applicability of the rule. The seven subparts that could potentially be affected include subpart I, subpart L, subpart T, subparts DD and SS, and subparts OO and QQ. Subpart I applicability is determined by a simplified emissions calculation that includes a specific, limited set of fluorinated GHGs, none of whose GWPs would be affected by finalization of this proposed rule. Under subpart L, all fluorinated gas production facilities that emit GHGs whose GWPs are increasing are already believed to be reporting. Similarly, all fluorinated GHG production facilities are already required to report under subpart OO, and all fluorinated GHG importers and exporters of the fluorinated GHGs and HTFs that would be assigned GWPs are already believed to report under subparts OO and QQ. The applicability of subparts DD and SS would not be affected because the thresholds for both subparts are expressed in terms of GHG masses rather than CO_2e masses. Any impact on the applicability of subpart T is expected to be negligible, because the fluorinated GHGs that would be assigned default GWPs and that would be reported under that subpart are believed to make up a very small fraction of the CO_2-e emissions from covered facilities. The OMB has previously approved the information collection requirements for subparts A, I, L, T, DD, OO, QQ, and SS under 40 CFR part 98 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned Office of Management and Budget (OMB) control numbers 2060–0629 and 2060–0650.

Further information on the EPA's assessment on the impact on burden can be found in the memorandum, ''Economic Analysis of Adding Chemical-Specific and Default GWPs to Table A–1'' in docket number EPA–HQ–OAR–2009–0927.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration'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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed addition of default GWPs to subpart A is not expected to affect the applicability of the rule to small entities.

Further, the EPA took several steps to reduce the impact of 40 CFR part 98 on small entities when developing the final GHG Reporting Rules in 2009 and 2010. For example, the EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. Finally, the EPA continues to conduct significant outreach on the GHGRP and maintains an ''open door'' policy for stakeholders to help inform the EPA's understanding of key issues for the industries. 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 (UMRA)

The proposed rule amendments do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Facilities and suppliers subject to the proposed rule include electronics manufacturers, fluorinated gas producers, magnesium producers and processers, manufacturers and users of electrical equipment, importers and exporters of fluorinated GHGs in bulk, and importers and exporters of pre-charged equipment and closed-cell foams. None of the facilities currently known to undertake these activities is owned by a small government. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It would 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. For a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final Greenhouse Gas Reporting Rule (74 FR 56266).

The proposed amendments apply to facilities that directly emit fluorinated GHGs or that are suppliers of fluorinated GHGs. They would not apply to governmental entities unless the governmental entity owns a facility that directly emits fluorinated GHGs above threshold levels (such as a semiconductor manufacturing facility). We are not aware of any governmental entities that would be affected. This regulation also would not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, the EPA did consult with state and local officials or representatives of state and local governments in developing the original GHG Reporting Rule published on October 30, 2009 and the rule finalizing subparts I, L, DD, QQ, and SS published on December 1, 2010. A summary of the EPA's consultations with state and local governments is provided in Section VIII.E of the preamble to the 2009 final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

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

This action would not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed amendments apply to facilities that directly emit fluorinated GHGs or that are suppliers of fluorinated GHGs. They would not have tribal implications unless the tribal entity owns a facility that directly emits fluorinated GHGs above threshold levels (such as a semiconductor manufacturing facility). We are not aware of any tribal facilities that would be affected. Thus, Executive Order 13175 does not apply to this action. 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

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

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

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

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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

The EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment; it is a rule addressing information collection and reporting procedures.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: July 24, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend CFR title 40 chapter I as set forth below:

PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 98.2 is amended by revising paragraphs (b)(1), (b)(4), and (f)(1) to read as follows:

§ 98.2 Who must report?

* * * * *

(b) * * *

(1) Calculate the annual emissions of CO_2, CH_4, N_2O, and each fluorinated GHG in metric tons from all applicable source categories listed in paragraph (a)(2) of this section. The GHG emissions shall be calculated using the calculation methodologies specified in each applicable subpart and available company records.

* * * * *

(4) Sum the emissions estimates from paragraphs (b)(1), (b)(2), and (b)(3) of this section for each GHG and calculate metric tons of CO_2e using Equation A–1 of this section.

$$CO_2e = \sum_{i=1}^{n} GHG_i \times GWP_i \quad \text{(Eq. A-1)}$$

Where:

CO_2e = Carbon dioxide equivalent, metric tons/year.

GHG_i = Mass emissions of each greenhouse gas, metric tons/year.

GWP_i = Global warming potential for each greenhouse gas from Table A–1 of this subpart.

n = The number of greenhouse gases emitted.

* * * * *

(f) * * *

(1) Calculate the mass in metric tons per year of CO_2, N_2O, and each fluorinated GHG that is imported and the mass in metric tons per year of CO_2, N_2O, and each fluorinated GHG that is exported during the year.

* * * * *

■ 3. Section 98.3 is amended by:

■ a. Revising paragraph (c)(4)(iii)(E);

■ b. Removing and reserving paragraph (c)(4)(vi);

■ c. Revising paragraphs (c)(5)(i), (c)(5)(ii), (c)(12)(iii)(E), (k), (l) introductory text, (l)(1) introductory text, (l)(2) introductory text, (l)(2)(i), (l)(2)(ii)(C) through (E); and, (l)(2)(iii).

The revisions read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(E) Each fluorinated GHG (as defined in § 98.6).

* * * * *

(vi) [Reserved]

* * * * *

(5) * * *

(i) Total quantity of GHG aggregated for all GHG from all applicable supply categories in Table A–5 of this subpart and expressed in metric tons of CO_2e calculated using Equation A–1 of this subpart.

(ii) Quantity of each GHG from each applicable supply category in Table A–5 to this subpart, expressed in metric tons of each GHG.

* * * * *

(12) * * *

(iii) * * *

(E) Each fluorinated GHG.

* * * * *

(k) *Revised global warming potentials and special provisions for reporting year 2013 and subsequent reporting years.* This paragraph (k) applies to owners or operators of facilities or suppliers that first become subject to any subpart of part 98 solely due to an amendment to Table A–1 of this subpart.

(1) A facility or supplier that first becomes subject to part 98 due to a change in the GWP for one or more compounds in Table A–1 of this subpart, Global Warming Potentials, is not required to submit an annual GHG report for the reporting year during which the change in GWPs is promulgated.

(2) A facility or supplier that was already subject to one or more subparts of part 98 but becomes subject to one or more additional subparts due to a change in the GWP for one or more compounds in Table A–1 of this subpart, is not required to include those subparts to which the facility is subject only due to the change in the GWP in the annual GHG report submitted for the reporting year during which the change in GWPs is promulgated.

(3) Starting on January 1 of the year after the year during which the change in GWPs is promulgated, facilities or suppliers identified in paragraphs (k)(1) or (2) of this section must start monitoring and collecting GHG data in compliance with the applicable subparts of part 98 to which the facility is subject due to the change in the GWP for the annual greenhouse gas report for that reporting year, which is due by March 31 of the following calendar year.

(4) A change in the GWP for one or more compounds includes the addition to Table A–1 of this subpart of either a chemical-specific or a default GWP that applies to a compound to which no chemical-specific GWP in Table A–1 of this subpart previously applied.

(l) *Special provision for best available monitoring methods in 2014 and subsequent years.* This paragraph (l) applies to owners or operators of facilities or suppliers that first become subject to any subpart of part 98 due to an amendment to Table A–1 of this subpart, Global Warming Potentials.

(1) *Best available monitoring methods.* From January 1 to March 31 of the year after the year during which the change in GWPs is promulgated, owners or operators subject to this paragraph (l) may use best available monitoring methods for any parameter (e.g., fuel use, feedstock rates) that cannot reasonably be measured according to the monitoring and QA/QC requirements of a relevant subpart. The owner or operator must use the calculation methodologies and equations in the ''Calculating GHG Emissions'' sections of each relevant subpart, but may use the best available monitoring method for any parameter for which it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1 of the year after the year during which the change in GWPs is promulgated. Starting no later than April 1, of the year after the year during which the change in GWPs is promulgated, the owner or operator must discontinue using best available methods and begin following all applicable monitoring and QA/QC requirements of this part, except as provided in paragraph (l)(2) of this section. Best available monitoring methods means any of the following methods:

* * * * *

(2) *Requests for extension of the use of best available monitoring methods.* The owner or operator may submit a request to the Administrator to use one or more best available monitoring methods beyond March 31 of the year after the year during which the change in GWPs is promulgated.

(i) *Timing of request.* The extension request must be submitted to EPA no later than January 31 of the year after the year during which the change in GWPs is promulgated.

(ii) * * *

(C) A description of the reasons that the needed equipment could not be obtained and installed before April 1 of the year after the year during which the change in GWPs is promulgated.

(D) If the reason for the extension is that the equipment cannot be purchased and delivered by April 1 of the year after the year during which the change in GWPs is promulgated, supporting documentation such as the date the monitoring equipment was ordered, investigation of alternative suppliers and the dates by which alternative vendors promised delivery, backorder notices or unexpected delays, descriptions of actions taken to expedite delivery, and the current expected date of delivery.

(E) If the reason for the extension is that the equipment cannot be installed without a process unit shutdown, include supporting documentation demonstrating that it is not practicable to isolate the equipment and install the monitoring instrument without a full process unit shutdown. Include the date of the most recent process unit shutdown, the frequency of shutdowns for this process unit, and the date of the next planned shutdown during which the monitoring equipment can be installed. If there has been a shutdown or if there is a planned process unit shutdown between November 29 of the year during which the change in GWPs is promulgated and April 1 of the year after the year during which the change in GWPs is promulgated, include a justification of why the equipment could not be obtained and installed during that shutdown.

* * * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by April 1 of the year after the year during which the change in GWPs is promulgated. The use of best available methods under this paragraph (l) will not be approved beyond December 31 of the year after the year during which the change in GWPs is promulgated.

■ 4. Section 98.6 is amended by:

■ a. Adding, in alphabetical order, the definitions for Fluorinated GHG group, Fluorotelomer alcohols, Fully fluorinated GHGs;

■ b. Revising the definition for Global warming potential; and

■ c. Adding, in alphabetical order, the definitions for Non-segregated saturated hydrochlorofluoroethers (HCFEs), Non-segregated saturated hydrofluoroethers (HFEs), Other fluorinated GHGs, Partially segregated saturated hydrochlorofluoroethers (HCFEs), Partially segregated saturated hydrofluoroethers (HFEs), Saturated hydrochlorofluoroethers (HCFEs), Saturated hydrofluorocarbons (HFCs), Saturated hydrofluoroethers (HFEs), Unsaturated ethers, Unsaturated hydrochlorofluorocarbons (HCFCs),

Unsaturated hydrofluorocarbons (HFCs); and, Unsaturated perfluorocarbons (PFCs).

The revisions and additions read as follows:

§ 98.6 Definitions.

* * * * *

Fluorinated GHG group means one of the following sets of fluorinated GHGs: Fully fluorinated GHGs; saturated hydrofluorocarbons; partially segregated saturated hydrofluoroethers and saturated hydrochlorofluoroethers; non-segregated saturated hydrofluoroethers and saturated hydrochlorofluoroethers; unsaturated PFCs, unsaturated HFCs, unsaturated HCFCs, unsaturated ethers, unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones; fluorotelomer alcohols; fluorinated GHGs with carbon-iodine bonds; or Other fluorinated GHGs.

* * * * *

Fluorotelomer alcohols means fluorinated GHGs with the chemical formula CnF2n+1CH2CH2OH.

* * * * *

Fully fluorinated GHGs means fluorinated GHGs that contain only single bonds and in which all available valence locations are filled by fluorine atoms. This includes but is not limited to: saturated perfluorocarbons; SF_6; NF_3; SF_5CF_3; fully fluorinated linear, branched, and cyclic alkanes; fully fluorinated ethers; fully fluorinated tertiary amines; fully fluorinated aminoethers; and perfluoropolyethers.

* * * * *

Global warming potential or GWP means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., CO_2. GWPs for each greenhouse gas are provided in Table A–1 of this subpart. For purposes of the calculations in this part, if the GHG has a chemical-specific GWP listed in Table A–1, use that GWP. Otherwise, use the default GWP provided in Table A–1 for the fluorinated GHG group of which the GHG is a member.

* * * * *

Non-segregated saturated hydrochlorofluoroethers (HCFEs) means saturated hydrochlorofluoroethers that include fluorine substitutes on all alkyl groups.

Non-segregated saturated hydrofluoroethers (HFEs) means saturated hydrofluoroethers that include fluorine substitutes on all alkyl groups.

* * * * *

Other fluorinated GHGs means fluorinated GHGs that are none of the following: Fully fluorinated GHGs, saturated hydrofluorocarbons, saturated hydrofluoroethers, saturated hydrochlorofluoroethers, unsaturated perfluorocarbons, unsaturated hydrofluorocarbons, unsaturated hydrochlorofluorocarbons, unsaturated ethers, unsaturated halogenated esters, fluorinated aldehydes, fluorinated ketones, fluorotelomer alcohols, or fluorinated GHGs with carbon-iodine bonds.

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Partially segregated saturated hydrochlorofluoroethers (HCFEs) means saturated hydrochlorofluoroethers that contain at least one fully hydrogenated alkyl group with no fluorine or chlorine substitutes.

Partially segregated saturated hydrofluoroethers (HFEs) means saturated hydrofluoroethers that contain at least one fully hydrogenated alkyl group with no fluorine substitutes.

* * * * *

Saturated hydrochlorofluoroethers (HCFEs) means fluorinated GHGs in which two hydrocarbon groups are linked by an oxygen atom; in which two or more, but not all, of the hydrogen atoms in the hydrocarbon groups have been replaced by fluorine atoms and chlorine atoms; and which contain only single bonds.

Saturated hydrofluorocarbons (HFCs) means fluorinated GHGs that are hydrofluorocarbons and that contain only single bonds.

Saturated hydrofluoroethers (HFEs) means fluorinated GHGs in which two hydrocarbon groups are linked by an oxygen atom; in which one or more, but not all, of the hydrogen atoms in the hydrocarbon groups have been replaced by fluorine atoms; and which contain only single bonds.

* * * * *

Unsaturated ethers means fluorinated GHGs in which two hydrocarbon groups are linked by an oxygen atom; in which one or more of the hydrogen atoms in the hydrocarbon groups have been replaced by fluorine atoms; and which contain one or more bonds that are not single bonds. Unsaturated ethers include unsaturated HFEs.

Unsaturated hydrochlorofluorocarbons (HCFCs) means fluorinated GHGs that contain only carbon, chlorine, fluorine, and hydrogen and that contain one or more bonds that are not single bonds.

Unsaturated hydrofluorocarbons (HFCs) means fluorinated GHGs that are hydrofluorocarbons and that contain one or more bonds that are not single bonds.

Unsaturated perfluorocarbons (PFCs) means fluorinated GHGs that are perfluorocarbons and that contain one or more bonds that are not single bonds.

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■ 5. Table A–1 to Subpart A is revised to read as follows:

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS

[100-year time horizon]

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Chemical-Specific GWPs			
Carbon dioxide	124–38–9	CO_2	1
Methane	74–82–8	CH_4	[a]25
Nitrous oxide	10024–97–2	N_2O	[a]298
Fully Fluorinated GHGs			
Sulfur hexafluoride	2551–62–4	SF_6	[a]22,800
Trifluoromethyl sulphur pentafluoride	373–80–8	SF_5CF_3	17,700
Nitrogen trifluoride	7783–54–2	NF_3	17,200
PFC-14 (Perfluoromethane)	75–73–0	CF_4	[a]7,390
PFC-116 (Perfluoroethane)	76–16–4	C_2F_6	[a]12,200
PFC-218 (Perfluoropropane)	76–19–7	C_3F_8	[a]8,830

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS—Continued

[100-year time horizon]

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Perfluorocyclopropane	931–91–9	C-C_3F_6	17,340
PFC-3-1-10 (Perfluorobutane)	355–25–9	C_4F_{10}	[a] 8,860
PFC-318 (Perfluorocyclobutane)	115–25–3	C-C_4F_8	[a] 10,300
PFC-4-1-12 (Perfluoropentane)	678–26–2	C_5F_{12}	[a] 9,160
PFC-5-1-14 (Perfluorohexane, FC-72)	355–42–0	C_6F_{14}	[a] 9,300
PFC-9-1-18	306–94–5	$C_{10}F_{18}$	7,500
PFC-6-1-12	335–57–9	C_7F_{16}; $CF_3(CF_2)_5CF_3$	[b] 7,820
PFC-7-1-18	307–34–6	C_8F_{18}; $CF_3(CF_2)_6CF_3$	[b] 7,620
PFPMIE (HT–70)	NA	$CF_3OCF(CF_3)CF_2OCF_2OCF_3$	10,300
Perfluorodecalin (cis)	60433–11–6	Z-$C_{10}F_{18}$	[b] 7,236
Perfluorodecalin (trans)	60433–12–7	E-$C_{10}F_{18}$	[b] 6,288
Saturated hydrofluorocarbons (HFCs)			
HFC-23	75–46–7	CHF_3	[a] 14,800
HFC-32	75–10–5	CH_2F_2	[a] 675
HFC-41	593–53–3	CH_3F	[a] 92
HFC-125	354–33–6	C_2HF_5	[a] 3,500
HFC-134	359–35–3	$C_2H_2F_4$	[a] 1,100
HFC-134a	811–97–2	CH_2FCF_3	[a] 1,430
HFC-143	430–66–0	$C_2H_3F_3$	[a] 353
HFC-143a	420–46–2	$C_2H_3F_3$	[a] 4,470
HFC-152	624–72–6	CH_2FCH_2F	53
HFC-152a	75–37–6	CH_3CHF_2	[a] 124
HFC-161	353–36–6	CH_3CH_2F	12
HFC-227ca	2252–84–8	$CF_3CF_2CHF_2$	[b] 2640
HFC-227ea	431–89–0	C_3HF_7	[a] 3,220
HFC-236cb	677–56–5	$CH_2FCF_2CF_3$	1,340
HFC-236ea	431–63–0	CHF_2CHFCF_3	1,370
HFC-236fa	690–39–1	$C_3H_2F_6$	[a] 9,810
HFC-245ca	679–86–7	$C_3H_3F_5$	[a] 693
HFC-245cb	1814–88–6	$CF_3CF_2CH_3$	[b] 4,620
HFC-245ea	24270–66–4	$CHF_2CHFCHF_2$	[b] 235
HFC-245eb	431–31–2	$CH_2FCHFCF_3$	[b] 290
HFC-245fa	460–73–1	$CHF_2CH_2CF_3$	1,030
HFC-263fb	421–07–8	$CH_3CH_2CF_3$	[b] 76
HFC-272ca	420–45–1	$CH_3CF_2CH_3$	[b] 144
HFC-329p	375–17–7	$CHF_2CF_2CF_2CF_3$	[b] 2,360
HFC-365mfc	406–58–6	$CH_3CF_2CH_2CF_3$	794
HFC-43-10mee	138495–42–8	$CF_3CFHCFHCF_2CF_3$	[a] 1,640
Partially segregated saturated hydrofluoroethers (HFEs) and hydrochlorofluoroethers (HCFEs)			
HFE-143a	421–14–7	CH_3OCF_3	756
HFE-245cb2	22410–44–2	$CH_3OCF_2CF_3$	708
HFE-254cb2	425–88–7	$CH_3OCF_2CHF_2$	359
HFE-263fb2	460–43–5	$CF_3CH_2OCH_3$	11
HFE-263m1; R-E-143a	690–22–2	$CF_3OCH_2CH_3$	[b] 29
HFE-347mcc3 (HFE-7000)	375–03–1	$CH_3OCF_2CF_2CF_3$	575
HFE-347mmy1	22052–84–2	$CH_3OCF(CF_3)_2$	343
HFE-356mec3	382–34–3	$CH_3OCF_2CHFCF_3$	101
HFE-356mm1	13171–18–1	$(CF_3)_2CHOCH_3$	27
HFE-356pcc3	160620–20–2	$CH_3OCF_2CF_2CHF_2$	110
HFE-365mcf2	22052–81–9	$CF_3CF_2OCH_2CH_3$	[b] 58
HFE-365mcf3	378–16–5	$CF_3CF_2CH_2OCH_3$	11
HFE-374pc2	512–51–6	$CH_3CH_2OCF_2CHF_2$	557
HFE-449s1 (HFE-7100) Chemical blend	163702–07–6	$C_4F_9OCH_3$	297
	163702–08–7	$(CF_3)_2CFCF_2OCH_3$	
HFE-569sf2 (HFE-7200) Chemical blend	163702–05–4	$C_4F_9OC_2H_5$	59
	163702–06–5	$(CF_3)_2CFCF_2OC_2H_5$	
HG′-01	73287–23–7	$CH_3OCF_2CF_2OCH_3$	[b] 222
HG′-02	485399–46–0	$CH_3O(CF_2CF_2O)_2CH_3$	[b] 236
HG′-03	485399–48–2	$CH_3O(CF_2CF_2O)_3CH_3$	[b] 221
Difluoro(methoxy)methane	359–15–9	CH_3OCHF_2	[b] 144
2-Chloro-1,1,2-trifluoro-1-methoxyethane	425–87–6	CH_3OCF_2CHFCl	[b] 122
1-Ethoxy-1,1,2,2,3,3,3-heptafluoropropane	22052–86–4	$CF_3CF_2CF_2OCH_2CH_3$	[b] 61
2-Ethoxy-3,3,4,4,5-pentafluorotetrahydro-2,5-bis[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-furan.	920979–28–8	$C_{12}H_5F_{19}O_2$	[b] 56
1-Ethoxy-1,1,2,3,3,3-hexafluoropropane	380–34–7	$CF_3CHFCF_2OCH_2CH_3$	[b] 23

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS—Continued

[100-year time horizon]

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Fluoro(methoxy)methane	460–22–0	CH_3OCH_2F	[b] 13
1,1,2,2-Tetrafluoro-3-methoxy-propane; Methyl 2,2,3,3-tetrafluoropropyl ether.	60598–17–6	$CHF_2CF_2CH_2OCH_3$	[b] 0.5
Non-segregated saturated hydrofluoroethers (HFEs) and hydrochlorofluoroethers (HCFEs)			
HFE-125	3822–68–2	CHF_2OCF_3	14,900
HFE-134 (HG-00)	1691–17–4	CHF_2OCHF_2	6,320
HFE-227ea	2356–62–9	$CF_3CHFOCF_3$	1,540
HFE-236ca	32778–11–3	$CHF_2OCF_2CHF_2$	[b] 4,240
HFE-236ca12 (HG-10)	78522–47–1	$CHF_2OCF_2OCHF_2$	2,800
HFE-236ea2 (Desflurane)	57041–67–5	$CHF_2OCHFCF_3$	989
HFE-236fa	20193–67–3	$CF_3CH_2OCF_3$	487
HFE-245fa1	84011–15–4	$CHF_2CH_2OCF_3$	286
HFE-245fa2	1885–48–9	$CHF_2OCH_2CF_3$	659
HFE-329mcc2	134769–21–4	$CF_3CF_2OCF_2CHF_2$	919
HFE-329me3	428454–68–6	$CF_3CFHCF_2OCF_3$	[b] 4,550
HFE-338mcf2	156053–88–2	$CF_3CF_2OCH_2CF_3$	552
HFE-338mmz1	26103–08–2	$CHF_2OCH(CF_3)_2$	380
HFE-338pcc13 (HG-01)	188690–78–0	$CHF_2OCF_2CF_2OCHF_2$	1,500
HFE-347mcf2	171182–95–9	$CF_3CF_2OCH_2CHF_2$	374
HFE-347mmz1 (Sevoflurane)	28523–86–6	$(CF_3)_2CHOCHF_2$	[c] 216
HFE-347pcf2	406–78–0	$CHF_2CF_2OCH_2CF_3$	580
HFE-356mff2	333–36–8	$CF_3CH_2OCH_2CF_3$	[b] 17
HFE-356pcf2	50807–77–7	$CHF_2CH_2OCF_2CHF_2$	265
HFE-356pcf3	35042–99–0	$CHF_2OCH_2CF_2CHF_2$	502
HFE-43-10pccc (H-Galden 1040x, HG-11)	E1730133	$CHF_2OCF_2OC_2F_4OCHF_2$	1,870
HCFE-235ca2 (Enflurane)	13838–16–9	$CHF_2OCF_2CHFC_1$	[b] 583
HCFE-235da2 (Isoflurane)	26675–46–7	$CHF_2OCHClCF_3$	350
HG-02	205367–61–9	$HF_2C\text{-}(OCF_2CF_2)_2\text{-}OCF_2H$	[b] 2,730
HG-03	173350–37–3	$HF_2C\text{-}(OCF_2CF_2)_3\text{-}OCF_2H$	[b] 2,850
HG-20	249932–25–0	$HF_2C\text{-}(OCF_2)_2\text{-}OCF_2H$	[b] 5,300
HG-21	249932–26–1	$HF_2C\text{-}OCF_2CF_2OCF_2OCF_2O\text{-}CF_2H$	[b] 3,890
HG-30	188690–77–9	$HF_2C\text{-}(OCF_2)_3\text{-}OCF_2H$	[b] 7,330
1,1,1,2,2,3,3-Heptafluoro-3-(1,2,2,2-tetrafluoroethoxy)-propane.	3330–15–2	$CF_3CF_2CF_2OCHFCF_3$	[b] 6,490
1,1′-Oxybis[2-(difluoromethoxy)-1,1,2,2-tetrafluoroethane.	205367-61–9	$HCF_2O(CF_2CF_2O)_2CF_2H$	[b] 4,920
1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-hexadecafluoro-2,5,8,11-Tetraoxadodecane.	173350–37–3	$HCF_2O(CF_2CF_2O)_3\ CF_2H$	[b] 4,490
1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12,13,13,15,15-eicosafluoro-2,5,8,11,14-Pentaoxapentadecane.	173350–38–4	$HCF_2O(CF_2CF_2O)_4CF_2H$	[b] 3,630
1,1,2-Trifluoro-2-(trifluoromethoxy)-ethane	84011–06–3	$CHF_2CHFOCF_3$	[b] 1,240
1,1,2,2-Tetrafluoro-1-(fluoromethoxy)ethane	37031-31–5	$CH_2FOCF_2CF_2H$	[b] 871
Trifluoro(fluoromethoxy)methane	2261–01–0	CH_2FOCF_3	[b] 751
Difluoro(fluoromethoxy)methane	461–63–2	CH_2FOCHF_2	[b] 617
Fluoro(fluoromethoxy)methane	462–51–1	CH_2FOCH_2F	[b] 130
Unsaturated perfluorocarbons (PFCs)			
PFC-1114; TFE	116–14–3	$CF_2{=}CF_2$; C_2F_4	[b] 0.04
PFC-1216; Dyneon HFP	116–15–4	C_3F_6; $CF_3CF{=}CF_2$	[b] 0.05
PFC C-1418	559–40–0	c-C_5F_8	[b] 1.97
Perfluorobut-2-ene	360–89–4	$CF_3CF{=}CFCF_3$	[b] 1.82
Perfluorobut-1-ene	357–26–6	$CF_3CF_2CF{=}CF_2$	[b] 0.10
Perfluorobuta-1,3-diene	685–63–2	$CF_2{=}CFCF{=}CF_2$	[b] 0.03
Unsaturated hydrofluorocarbons (HFCs) and hydrochlorofluorocarbons (HCFCs)			
HFC-1132a; VF2	75–38–7	$C_2H_2F_2$, $CF_2{=}CH_2$	[b] 0.04
HFC-1141; VF	75–02–5	C_2H_3F, $CH_2{=}CHF$	[b] 0.02
(E)-HFC-1225ye	5595–10–8	$CF_3CF{=}CHF(E)$	[b] 0.06
(Z)-HFC-1225ye	5528–43–8	$CF_3CF{=}CHF(Z)$	[b] 0.22
Solstice 1233zd(E)	102687–65–0	$C_3H_2ClF_3$; $CHCl{=}CHCF_3$	[b] 1.34
HFC-1234yf; HFO-1234yf	754–12–1	$C_3H_2F_4$; $CF_3CF{=}CH_2$	[b] 0.31
HFC-1234ze(E)	1645–83–6	C3H2F4; cis-CF3CH=CHF	[b] 0.97
HFC-1234ze(Z)	29118–25–0	$C_3H_2F_4$; trans-$CF_3CH{=}CHF$; $CF_3CH{=}CHF(Z)$	[b] 0.29
HFC-1243zf; TFP	677–21–4	$C_3H_3F_3$, $CF_3CH{=}CH_2$	[b] 0.12
(Z)-HFC-1336	692–49–9	$CF_3CH{=}CHCF_3(Z)$	[b] 1.58

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS—Continued

[100-year time horizon]

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
HFO-1345zfc	374–27–6	$C_2F_5CH=CH_2$	[b] 0.09
Capstone 42-U	19430–93–4	$C_6H_3F_9$, $CF_3(CF_2)_3CH=CH_2$	[b] 0.16
Capstone 62-U	25291–17–2	$C_8H_3F_{13}$, $CF_3(CF_2)_5CH=CH_2$	[b] 0.11
Capstone 82-U	21652–58–4	$C_{10}H_3F_{17}$, $CF_3(CF_2)_7CH=CH_2$	[b] 0.09
Unsaturated halogenated ethers			
PMVE; HFE-216	1187–93–5	$CF_3OCF=CF_2$	[b] 0.17
Fluoroxene	406–90–6	$CF_3CH_2OCH=CH_2$	[b] 0.05
Fluorinated aldehydes			
3,3,3-Trifluoro-propanal	460–40–2	CF_3CH_2CHO	[b] 0.01
Fluorinated ketones			
Novec 1230 (perfluoro (2-methyl-3-pentanone))	756–13–8	$CF_3CF_2C(O)CF\ (CF3)_2$	[b] 0.1
Fluorotelomer alcohols			
3,3,4,4,5,5,6,6,7,7,7-Undecafluoroheptan-1-ol	185689–57–0	$CF_3(CF_2)_4CH_2CH_2OH$	[b] 0.43
3,3,3-Trifluoropropan-1-ol	2240–88–2	$CF_3CH_2CH_2OH$	[b] 0.35
3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-Pentadecafluorononan-1-ol.	755-02–2	$CF_3(CF_2)_6CH_2CH_2OH$	[b] 0.33
3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-Nonadecafluoroundecan-1-ol.	87017–97–8	$CF_3(CF_2)_8CH_2CH_2OH$	[b] 0.19
Fluorinated GHGs with carbon-iodine bond(s)			
Trifluoroiodomethane	2314–97–8	CF_3I	[b] 0.4
Other fluorinated compounds			
Trifluoromethyl formate	85358–65–2	$HCOOCF_3$	[b] 588
Perfluoroethyl formate	313064–40–3	$HCOOCF_2CF_3$	[b] 580
1,2,2,2-Tetrafluoroethyl formate	481631–19–0	$HCOOCHFCF_3$	[b] 470
Perfluorobutyl formate	197218–56–7	$HCOOCF_2CF_2CF_2CF_3$	[b] 392
Perfluoropropyl formate	271257–42–2	$HCOOCF_2CF_2CF_3$	[b] 376
1,1,1,3,3,3-Hexafluoropropan-2-yl formate	856766–70–6	$HCOOCH(CF_3)_2$	[b] 333
Dibromodifluoromethane (Halon 1202)	75–61–6	CBR_2F_2	[b] 231
Bis(trifluoromethyl)-methanol	920–66–1	$(CF_3)_2CHOH$	195
1,1,1,3,3,3-Hexafluoropropan-2-ol	920–66–1	$(CF_3)_2CHOH$	[b] 182
Methyl carbonofluoridate	1538–06–3	$FCOOCH_3$	[b] 95
(Octafluorotetramethy-lene) hydroxymethyl group	NA	$X\text{-}(CF_2)_4CH(OH)\text{-}X$	73
Methyl 2,2,2-trifluoroacetate	431–47–0	CF_3COOCH_3	[b] 52
2,2,3,3,3-pentafluoropropanol	422–05–9	$CF_3CF_2CH_2OH$	42
2-Bromo-2-chloro-1,1,1-trifluoroethane (Halon-2311/Halothane).	151–67–7	$CHBrClCF_3$	[b] 41
2,2,3,3,4,4,4-Heptafluorobutan-1-ol	375–01–9	C_3F_7CH2OH	[b] 34
2,2,2-Trifluoroethyl formate	32042–38–9	$HCOOCH_2CF_3$	[b] 33
1,1-Difluoroethyl 2,2,2-trifluoroacetate	1344118–13–3	$CF_3COOCF_2CH_3$	[b] 31
Difluoromethyl 2,2,2-trifluoroacetate	2024–86–4	$CF_3COOCHF_2$	[b] 27
1,1-Difluoroethyl carbonofluoridate	1344118–11–1	$FCOOCF_2CH_3$	[b] 27
2,2,2-Trifluoroethanol	75–89–8	CF_3CH_2OH	[b] 20
2,2,3,3,3-Pentafluoropropan-1-ol	422–05–9	$CF_3CF_2CH_2OH$	[b] 19
2,2,3,4,4,4-Hexafluoro-1-butanol	382–31–0	$CF_3CHFCF_2CH_2OH$	[b] 17
3,3,3-Trifluoropropyl formate	1344118–09–7	$HCOOCH_2CH_2CF_3$	[b] 17
2,2,3,3,4,4,4-Heptafluoro-1-butanol	375–01–9	$CF_3CF_2CF_2CH_2OH$	[b] 16
2,2,3,3-Tetrafluoro-1-propanol	76–37–9	$CHF_2CF_2CH_2OH$	[b] 13
2,2,2-Trifluoroethyl 2,2,2-trifluoroacetate	407–38–5	$CF_3COOCH_2CF_3$	[b] 7
Methyl 2,2-difluoroacetate	433–53–4	HCF_2COOCH_3	[b] 3
2,2-Difluoroethanol	359–13–7	CHF_2CH2OH	[b] 3
Perfluoroethyl acetate	343269–97–6	$CH_3COOCF_2CF_3$	[b] 2.1
Trifluoromethyl acetate	74123–20–9	CH_3COOCF_3	[b] 2.0
Perfluoropropyl acetate	1344118–10–0	$CH_3COOCF_2CF_2CF_3$	[b] 1.8
Perfluorobutyl acetate	209597–28–4	$CH_3COOCF_2CF_2CF_2CF_3$	[b] 1.6
Ethyl 2,2,2-trifluoroacetate	383–63–1	$CF_3COOCH_2CH_3$	[b] 1.3
2-Fluoroethanol	371–62–0	CH_2FCH_2OH	[b] 1.1
4,4,4-Trifluorobutan-1-ol	461–18–7	$CF_3(CH_2)_2CH_2OH$	[b] 0.05

DEFAULT GWPS FOR COMPOUNDS FOR WHICH CHEMICAL-SPECIFIC GWPS ARE NOT LISTED ABOVE

Fluorinated GHG group [d]	Global warming potential (100 yr.)
Fully fluorinated GHGs	10,000
Saturated hydrofluorocarbons (HFCs)	2,200
Partially segregated saturated hydrofluoroethers (HFEs) and hydrochlorofluoroethers (HCFEs)	200
Non-segregated saturated HFEs and HCFEs	2,400
Unsaturated perfluorocarbons (PFCs), unsaturated HFCs, unsaturated hydrochlorofluorocarbons (HCFCs), unsaturated halogenated ethers, unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones	1
Fluorotelomer alcohols	1
Fluorinated GHGs with carbon-iodine bond(s)	1
Other fluorinated GHGs	110

[a] The GWP for this compound is different than the GWP in the version of Table A–1 to subpart A of Part 98 published on October 30, 2009.
[b] This compound was added to Table A–1 for reporting year 2014 and subsequent reporting years.
[c] The GWP for this compound was updated for reporting year 2014 and subsequent reporting years.
[d] For electronics manufacturing (as defined in § 98.90), the term "fluorinated GHGs" in the definition of each fluorinated GHG group in § 98.6 shall include fluorinated heat transfer fluids (as defined in § 98.98), whether or not they are also fluorinated GHGs.

Subpart I—Electronics Manufacturing

■ 6. Section 98.93 is amended by revising paragraph (i)(2) introductory paragraph to read as follows:

§ 98.93 Calculating GHG emissions.

* * * * *

(i) * * *

(2) *Method selection for stack systems in the fab.* If the calculations under paragraph (i)(1) of this section, as well as any subsequent annual measurements and calculations under this subpart, indicate that the stack system meets the criteria in paragraph (i)(2)(i) through (iii) of this section, then you may comply with either paragraph (i)(3) of this section (stack test method) or paragraph (i)(4) of this section (method to estimate emissions from the stack systems that are not tested). If the stack system does not meet all three criteria in paragraphs (i)(2)(i) through (iii) of this section, then you must comply with the stack test method specified in paragraph (i)(3) of this section.

* * * * *

■ 7. Section 98.94 is amended by:

■ a. Removing paragraph (j)(5)(ii)(C); and

■ b. Revising paragraph (j)(8)(i).

The revision reads as follows:

§ 98.94 Monitoring and QA/QC requirements.

* * * * *

(j) * * *

(8) * * *

(i) Annual consumption of a fluorinated GHG used during the most recent emissions test (expressed in CO_2e) changes by more than 10 percent of the total annual fluorinated GHG consumption, relative to gas consumption in CO_2e for that gas during the year of the most recent emissions test (for example, if the use of a single gas goes from 25 percent of CO_2e to greater than 35 percent of CO_2e, this change would trigger a re-test).

* * * * *

■ 8. Section 98.96 is amended by:

■ a. Revising the parameter "GWP_i" of Equation I–26 in introductory paragraph (r);

■ b. Revising the parameters "GWP_i" and "GWP_k" of Equation I–27 in paragraph (r)(1);

■ c. Revising the parameters "GWP_i" and "GWP_k" of Equation I–28 in paragraph (r)(2); and

■ d. Revising paragraph (x).

The revisions read as follows:

§ 98.96 Data reporting requirements.

* * * * *

(r) * * *

* * * * *

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part.

* * * * *

(1) * * *

* * * * *

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part.

GWP_k = GWP of emitted fluorinated GHG by-product k, from Table A–1 of this part.

* * * * *

(2) * * *

* * * * *

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part.

GWP_k = GWP of emitted fluorinated GHG by-product k, from Table A–1 of this part.

* * * * *

(x) If the emissions you report under paragraph (c) of this section include emissions from research and development activities, as defined in § 98.6, report the approximate percentage of total GHG emissions, on a metric ton CO_2e basis, that are attributable to research and development activities, using the following ranges: less than 5 percent, 5 percent to less than 10 percent, 10 percent to less than 25 percent, 25 percent to less than 50 percent, 50 percent and higher.

* * * * *

[FR Doc. 2014–17963 Filed 7–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58; FCC 14–98]

Connect America Fund; ETC Annual Reports and Certifications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on how best to maximize the reach of our existing Connect America budget and leverage non-Federal funding to extend broadband to as many households as possible when the Commission implements Phase II. Specifically, the Commission seeks comment regarding measures the Commission could take in the Phase II competitive bidding process to create incentives for state and other governmental entities to contribute funding to support the extension of broadband-capable networks.

DATES: Comments are due on or before September 2, 2014 and reply comments are due on or before September 15, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by either WC Docket No. 10–90 or WC Docket No. 14–58, by any of the following methods:

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

• *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *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.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10–90, 14–58; FCC 14–98, adopted on July 11, 2014 and released on July 14, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0714/FCC-14-98A1.pdf.* The Report and Order that was adopted concurrently with the FNPRM will be published elsewhere in the **Federal Register**.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

• *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 one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

• 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, 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 and boxes 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: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Introduction

1. Today the Commission takes further steps to implement the Connect America Fund to advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation's communications services. The Commission finalizes decisions to use on a limited scale Connect America funding for rural broadband experiments in price cap areas that will deploy new, robust broadband to consumers. In the FNPRM, the Commission seeks comment on how best to maximize the reach of our existing Connect America budget and leverage non-Federal funding to extend broadband to as many households as possible when the Commission implements Phase II.

II. Further Notice of Proposed Rulemaking

2. The Commission recognized in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, that universal service is a shared Federal and state responsibility, and that ''it is critical to our reforms' success that states remain key partners even as these programs evolve and traditional roles shift.'' The Commission sought comment in the *Tech Transitions FNPRM,* 79 FR 11366, February 28, 2014, on how to leverage non-Federal governmental sources of funding for the rural broadband experiments, but did not receive a sufficient record to enable it to resolve the implementation details associated with this proposal. The Commission remains committed to working with our state and other governmental partners to advance our mutually shared goals of preserving voice service and extending broadband-capable infrastructure to consumers across the nation. The Commission thus wishes to further explore how best to maximize the reach of our existing Connect America budget and leverage non-Federal funding to extend broadband to as many households as possible.

3. The Commission now seeks more focused comment on how to create inducements for state action to assist in the expansion of broadband. The Commission seeks comment on providing bidding credits in the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers in order to create incentives for states to share financial responsibility for preserving and extending broadband-capable infrastructure. In particular, the Commission seeks comment on providing a bidding credit to any bidder that is leveraging governmental support from non-Federal sources to lower the amount of funding requested from the Connect America Fund. For example, the Commission could provide a 10 percent bidding credit in situations where an applicant has obtained a commitment from a non-Federal government entity to match Federal dollars on a four-to-one basis, and a 5 percent bidding credit an applicant has obtained a commitment to match Federal dollars on an eight-to-one basis. If the Commission were to adopt such a bidding credit, what documentation would the bidder need to provide when submitting its bid so that the Commission could confirm its eligibility for the bidding credit? For instance, should the bidder be required to provide a letter indicating that non-Federal funding has been authorized, contingent on the entity being a winning bidder?

4. For purposes of awarding such a bidding credit, the Commission proposes to consider all forms of non-Federal assistance, including but not limited to support from a state universal

service fund, state broadband authority, other state institutions that provide funding for communications infrastructure development, appropriated funds, regional and local governmental authorities, or Tribal government funding. The Commission seeks comment on this proposal.

5. In order to qualify for the bidding credit, must the matching funds be in the form of a grant, or should the Commission also provide a credit if the bidder has a commitment for a loan from the relevant state or other non-Federal governmental authority?

6. As an alternative, should the Commission award a bidding credit to any bidder in a state that is a net donor to the universal service fund? This would be simple to administer and would provide one means of creating greater equity between states in terms of their respective net draws from the fund. If the Commission were to adopt such an approach, it proposes to utilize the most recent Universal Service Monitoring Report to determine which states are net donors.

III. Procedural Matters

A. Paperwork Reduction Analysis

7. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

8. The Commission will send a copy of the Further Notice of Proposed Rulemaking and concurrently adopted Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Initial Regulatory Flexibility Act Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

10. The Commission recognized in the *USF/ICC Transformation Order* that universal service is a shared federal and state responsibility, and that ''it is critical to our reforms' success that states remain key partners even as these programs evolve and traditional roles shift.'' The Commission remains committed to working with our state and other governmental partners to advance our mutually shared goals of preserving voice service and extending broadband-capable infrastructure to consumers across the nation. The Commission thus wishes to further explore how best to maximize the reach of our existing Connect America budget and leverage non-Federal governmental funding to extend broadband to as many households as possible. In the FNPRM the Commission seeks comment on how to create inducements for non-Federal governmental action to assist in the expansion of broadband. Specifically, the Commission seeks comment on providing bidding credits in the Phase II competitive bidding process to any bidder that is leveraging governmental support from non-Federal sources to lower the amount of funding requested from the Connect America Fund.

2. Legal Basis

11. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 214, 218–220, 254, 303(r), 403 of the Communications Act of 1934 as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 214, 218–220, 254, 303(r), 403, and 1302, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421.

3. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

13. Small Businesses. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

14. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

15. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

16. Incumbent Local Exchange Carriers (incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have

more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

17. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

18. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

19. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

20. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

21. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

22. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

23. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

24. 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

25. Wireless Telecommunications Carriers (except Satellite). Since 2007,

the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

26. Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

27. Advanced Wireless Services. In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

28. Narrowband Personal Communications Services. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35843, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

29. Paging (Private and Common Carrier). In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in

all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

30. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the FNPRM.

31. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

32. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

33. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

34. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

35. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is

eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

36. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

37. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

38. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

39. Upper 700 MHz Band Licenses. In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

40. 700 MHz Guard Band Licensees. In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

41. Cellular Radiotelephone Service. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as

Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

42. Private Land Mobile Radio (''PLMR''). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

43. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

44. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

45. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the FNPRM.

46. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the FNPRM.

47. Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

48. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard,

the majority of firms can be considered small.

49. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the FNPRM.

50. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

51. 218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

52. 2.3 GHz Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

53. 1670–1675 MHz Band. An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

54. 3650–3700 MHz band. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1,270 licenses have been granted and more than 7,433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

55. 24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

56. 24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

57. Satellite Telecommunications. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the

Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

58. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the FNPRM.

59. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

60. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

61. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

62. Cable System Operators. The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

63. Open Video Services. The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

64. Internet Service Providers. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that

operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

65. Internet Publishing and Broadcasting and Web Search Portals. Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

66. Data Processing, Hosting, and Related Services. Entities in this category ''primarily . . . provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

67. All Other Information Services. The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

68. In the FNPRM, the Commission seeks comment on what documentation a bidder would need to provide when submitting a bid for the Phase II competitive bidding process so that the Commission can confirm its eligibility for the bidding credit. The Commission seeks comment on possibly requiring applicants to provide a letter indicating that non-Federal funding has been authorized, contingent on the entity being a winner.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

69. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

70. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may affect small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

71. In the FNPRM, the Commission seeks comment on how to create inducements for non-Federal governmental action to assist in the expansion of broadband, specifically by providing a bidding credit in the Phase II competitive bidding process to any bidder that is leveraging non-Federal governmental sources of funding to lower the amount of funding requested from the Connect America Fund. Such an approach may benefit small entities. Small entities may choose to seek out sources of non-Federal governmental funding to help support their projects and gain a competitive advantage for the Phase II competitive bidding process. Recognizing that some small entities lack the ability that many larger companies have to take advantage of economies of scale, the extra funding and the bidding credit may make it possible for small entities to bid for projects that are more cost-effective than those proposed by larger entities.

72. The Commission anticipates that it will take into account the unique challenges faced by small entities when deciding whether to adopt a bidding credit, and if so, how it will work and what documentation entities would need to submit to confirm their eligibility for the bidding credit. The Commission encourages small entities to submit comments in response to the FNPRM describing concrete proposals for how the bidding credit can be designed to accommodate small entities.

6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

73. None.

D. Filing Requirements

74. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *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 one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.

• 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, 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 and boxes 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.

75. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

76. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

77. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, *Alexander.Minard@fcc.gov,* (202) 418–7400.

IV. Ordering Clauses

78. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 214, 218–220, 251, 254 and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 154(j), 214, 218–220, 251, 254, 303(r), 1302 the Further Notice of Proposed Rulemaking in WC Docket No. 10–90 and WC Docket No. 14–58 *is adopted,* effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

79. *It is further ordered,* that, pursuant to the authority contained in sections 1, 2, 4(i), 218–220, 214, 254, 303(r), 403 of the Communications Act of 1934 as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 214, 218–220, 254, 303(r), 403, and 1302, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.42, *notice is hereby given* of the proposals and tentative conclusions described in the Further Notice of Proposed Rulemaking.

80. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the FNPRM in WC Docket No.10–90 and WC Docket No. 14–58, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–17986 Filed 7–30–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2014–0052; Notice 1]

RIN 2127–AL09

Schedule of Fees

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year 2015 and until further notice relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 2, 2014.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted 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.

• *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202–366–5291). For legal issues, you may call Nicholas Englund, Office of Chief Counsel, NHTSA (202–366–5263). You may call Docket Management at 202–366–9324. You may visit the Docket in person from 9 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Introduction

NHTSA published a document on June 24, 1996 (61 FR 32411) fully discussing the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562, since recodified at 49 U.S.C. 30141–47. The reader is referred to that document for background information relating to this rulemaking action. Certain fees were initially established to become effective January 31, 1990, and have been periodically adjusted since then.

We are required to review and make appropriate adjustments at least every two years in the fees established for the administration of the RI program. *See* 49 U.S.C. 30141(e). The fees applicable in any fiscal year (FY) are to be established before the beginning of such year. *Ibid.* We are proposing fees that would become effective on October 1, 2014, the beginning of fiscal year (FY) 2015. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility decisions, and to cover the cost of processing the bonds furnished to the Department of Homeland Security (Customs). We last amended the fee schedule in 2012. *See* final rule published on August 22, 2012 at 77 FR 50637. Those fees apply to Fiscal Years 2013 and 2014.

Proposed fees are based on time and costs associated with the tasks for which the fees are assessed. The fees proposed in this document reflect the one percent increase in General Schedule salary rates that were effective January 1, 2014 and the slight increases in indirect costs attributed to the agency's overhead costs since the fees were last adjusted.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fees established ''to pay for the costs of carrying out the registration program for importers. . . .'' This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. 49 CFR 592.5(f).

To comply with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be increased from $330 to $333 for new applications. We also have tentatively determined that the fee for the review of the annual statement should be increased from $201 to $215. The proposed adjustments reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, and the small increases in indirect costs attributed to the agency's overhead costs in the two years since the fees were last adjusted, the increase in direct costs relating to the one percent raise in salaries of employees on the General Schedule that became effective on January 1, 2014, and the increase in contractor costs to the agency.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately $511 for each RI. When this $511 is added to the $333 representing the registration application component, the cost to an applicant for RI status comes to $844, which is the fee we propose. This represents an increase of $39 over the existing fee. When the $511 is added to the $215 representing the annual statement component, the total cost to an RI for renewing its registration comes to $726, which represents an increase of $50.

Sec. 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a *pro rata* allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and ''a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.'' For the purpose of establishing the fees that are currently in existence, indirect costs are $21.66 per man-hour. We are proposing to increase this figure by $4.07, to $25.73. This proposed increase is based on the difference between enacted budgetary costs within the Department of Transportation for the last two fiscal years, which were higher than the estimates used when the fee schedule was last amended, and takes into account other projected increases over the next two fiscal years.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions

Section 30141(a)(3)(B) also requires registered importers to pay other fees the Secretary of Transportation establishes to cover the costs of ''making the decisions under this subchapter.'' This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. certified motor vehicle, the decision is whether the safety features of the vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator's own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility decisions in a fiscal year. The agency's direct and indirect costs must be taken into account in the computation of these costs.

Since we last amended the fee schedule, the overall number of vehicle imports by RIs has increased, while the number of petitions has remained approximately the same. The total number of vehicles that RIs imported between 2009 and 2013 was 117,512 or approximately 23,502 vehicles each year. Over the same period, the number of vehicles imported under an import eligibility petition that was submitted by an RI (as opposed to an import eligibility decision initiated by the agency) increased to 1,987 or approximately 397 vehicles each year. Over the past five years, RIs submitted 83 petitions to NHTSA, averaging 17 per year and the agency has devoted more staff time reviewing and processing import eligibility petitions since we last revised the fees.

Based on these trends, the *pro rata* share of petition costs assessed against the importer of each vehicle covered by the eligibility decision will increase. We project that for FY 2015 and 2016, the agency's costs for processing these 17 petitions will be $60,095. The petitioners will pay $5,300 of that amount in the processing fees that accompany the filing of their petitions, leaving the remaining $54,795 to be recovered from the importers of the approximately 397 vehicles projected to be imported under petition-based import eligibility decisions. Dividing $54,795 by 397 yields a pro rata fee of $138 for each vehicle imported under an eligibility decision that results from the granting of a petition. We are therefore proposing to increase the pro rata share of petition costs that are to be assessed against the importer of each vehicle from $101 to $138, which represents an increase of $37. The same $138 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S.-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

We are proposing no increase in the current fee of $175 that covers the initial processing of a ''substantially similar'' petition. Likewise, we are also proposing to maintain the existing fee of $800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection would remain $827 for vehicles that are the subject of either type of petition.

The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by import eligibility numbers VSA–80 through 83, for which no eligibility decision fee is assessed), we are proposing that the fee remain $125. NHTSA determined that the costs associated with previous eligibility determinations on the agency's own initiative would be fully recovered by October 1, 2014. We propose to apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2014.

Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds

Section 30141(a)(3) also requires a registered importer to pay any other fees the Secretary of Transportation establishes ''to pay for the costs of . . . processing bonds provided to the Secretary of the Treasury . . .'' upon the importation of a nonconforming vehicle to ensure that the vehicle would be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

The Department of Homeland Security (Customs) exercises the functions associated with the processing of these bonds. To carry out the statute, we make a reasonable determination of the costs that Department incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

When the fee schedule was last amended, we projected no General Schedule salary raises to be effective in January 2013 and 2014. Based on the increase in hourly costs attributable to the approximately one percent raises in salaries of employees on the General Schedule that became effective on January 1, 2014, we are proposing that the processing fee be increased by $0.25, from $9.09 per bond to $9.34. This increase reflects the fact that GS–9 salaries have been increased since we last amended the fee schedule in 2012. The $9.34 proposed fee would more closely reflect the direct and indirect costs that should be associated with processing the bonds.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as ''cash deposits'') in an amount equal to the amount of the bond. 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the agency to consume a considerable amount of staff time and material resources. NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of $459 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. *See* the Final Rule published on July 11, 2008 at 73 FR 39890.

The agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. We are proposing to increase the fee from $495 to $499, which represents an increase of $4. The factors that the agency has taken into account in proposing the fee include time expended by agency personnel, the slight increase in overhead and contractor costs, and the increase in projected salary costs based on the General Schedule increase on January 1, 2014.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay $12 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We estimate that these costs will decrease from $12 to an average of $10 per vehicle. Although our overhead and contractor costs increased and the salary and benefit costs are slightly greater based on the General Schedule salary increase, the number of certificates of conformity submitted for agency review has increased. This has decreased the agency's cost attributed to the review of each certificate of conformity. Based on these estimates, we are proposing to decrease the fee charged for vehicles for which a paper entry and fee payment is made, from $12 to $10, a difference of $2 per vehicle. However, if an RI enters a vehicle through the Automated Broker Interface (ABI) system, has an email address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to $6. We propose to apply the fee of $6 per vehicle if all the information in the ABI entry is correct.

Errors in ABI entries not only eliminate any time savings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information to the conformity data that is ultimately submitted. Our experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve

the conflicts in the data. We have calculated this staff and supervisory time, as well the telephone charges, to amount to approximately $59 for each erroneous ABI entry. Adding this to the $6 fee for the review of conformity packages on automated entries yields a total of $65, representing a $2 increase in the fee that is currently charged when there are one or more errors in the ABI entry or in the statement of conformity.

Effective Date

The proposed effective date of the final rule is October 1, 2014.

Rulemaking Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that if made final, the costs of the proposed rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. If made final, the rule would have no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments would primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to pay the fees proposed by this action. In most instances, these fees would not be changed or be only modestly increased (and in some instances decreased) from the fees now being paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would 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. Moreover, NHTSA is required by statute to impose fees for the administration of the RI program and to review and make necessary adjustments in those fees at least every two years. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this proposed rule would not have any retroactive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part that the regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In this NPRM, NHTSA is requesting public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking.

G. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA. As noted above, this NPRM is not significant under E.O. 12866. NHTSA also believes that this rulemaking, if made final, would not have any effect on the supply, distribution or use of energy.

H. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 594 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,'' approved through April 30, 2017. This proposed rule, if made final, would not affect the burden hours associated with Clearance No. 2127–0002 because we are proposing only to adjust the fees associated with participating in the registered importer program. These proposed new fees will not impose new collection of information requirements or otherwise affect the scope of the program.

K. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

In this proposed rule, we propose to adjust the fees associated with the registered importer program. We propose no substantive changes to the program nor do we propose any technical standards. For these reasons, Section 12(d) of the NTTAA would not apply.

M. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long. 49 CFR 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.**

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this document under DATES. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided. You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

N. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 594 as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 594.6 by:
■ (a) Revising the introductory text of paragraph (a);
■ (b) Revising paragraph (b);
■ (c) Revising the first sentence of paragraph (d);
■ (d) Revising the second sentence of paragraph (h); and
■ (e) Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2014, must pay an annual fee of $844, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2014, is $333. The sum of $333, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2014, is set forth in paragraph (i) of this section. * * *

* * * * *

(h) * * * This cost is $25.73 per man-hour for the period beginning October 1, 2014.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning

October 1, 2014, is $511. When added to the costs of registration of $333, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $844. The annual renewal registration fee for the period beginning October 1, 2014, is $726.

■ 3. Amend § 594.7 by revising the first sentence of paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2014, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. * * *

* * * * *

■ 4. Amend § 594.8 by revising the first sentences of paragraphs (b) and (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $138. * * *

(c) If a determination has been made on or after October 1, 2014, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

■ 5. Amend § 594.9 by revising paragraphs (c) and (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2014, for which a certificate of conformity is furnished, is $9.34.

* * * * *

(e) The fee for each vehicle imported on and after October 1, 2014, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is $499.

■ 6. Amend § 594.10 by revising the first sentence of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2014 is $10. * * *

Issued on: July 22, 2014.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2014–17852 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140722613–4613–01]

RIN 0648- BE31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework amendment to the Fishery Management Plan for the Coastal Migratory Pelagic (CMP) Resources in the Gulf of Mexico and Atlantic Region (FMP) (Framework Amendment), as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). If implemented, this rule would modify the annual catch limits (ACLs) for Atlantic and Gulf of Mexico (Gulf) migratory group Spanish mackerel and modify the recreational annual catch target (ACT) for Atlantic migratory group Spanish mackerel, based on the results of the most recent stock assessments for Gulf and Atlantic migratory group Spanish mackerel. The Framework Amendment would also update the optimum yield (OY) for Atlantic migratory group Spanish mackerel. The purpose of this rule is to ensure ACLs are based on the best scientific information available and to ensure overfishing does not occur for the Spanish mackerel resource.

DATES: Written comments must be received on or before September 2, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2014–0075'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0075,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Framework Amendment, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA) and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CMP fishery of the South Atlantic and the Gulf is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Southeast Data, Assessment, and Review 28 (SEDAR 28) included benchmark assessments for Atlantic and Gulf migratory group Spanish mackerel that were completed in 2012 (and revised in 2013). In 2013, the Councils' Scientific and Statistical Committees (SSCs) reviewed the results of the assessments. Both SSCs accepted the benchmark assessments as representing the best available scientific information on the status of Spanish mackerel in Gulf and South Atlantic waters and considered the assessments appropriate for management decisions. In October 2013, the South Atlantic Fishery

Management Council's (South Atlantic Council) SSC recommended an overfishing limit (OFL) of 7.03 million lb (3.19 million kg) for the 2014–2015 fishing year, 6.62 million lb (3.0 million kg) for the 2015–2016 fishing year, and 6.52 million lb (2.96 million kg) for the 2016–2017 fishing year for Atlantic migratory group Spanish mackerel. The South Atlantic Council's SSC also recommended a revised acceptable biological catch (ABC) of 6.063 million lb (2.750 million kg) for the 2014–2015 through 2016–2017 fishing years. In August 2013, the Gulf of Mexico Fishery Management Council (Gulf Council) received and accepted the Gulf Council's SSC recommendations for the Gulf Spanish mackerel OFL and ABC for the 2013–2014 through 2016–2017 fishing years. The OFL was set at 14.4 million lb (6.5 million kg) for the 2013–2014 fishing year, 12.9 million lb (5.9 million kg) for 2014–2015 fishing year, 12.0 million lb (5.4 million kg) for the 2015–2016 fishing year, and 11.5 million lb (5.2 million kg) for the 2016–2017 fishing year. For Gulf migratory group Spanish mackerel, the Gulf Council's SSC recommended ABCs at 14.2 million lb (6.4 million kg) for the 2013–2014 fishing year, 12.7 million lb (5.8 million kg) for the 2014–2015 fishing year, 11.8 million lb (5.3 million kg) for the 2015–2016 fishing year, and 11.3 million lb (5.1 million kg) for the 2016–2017 fishing year.

Based on these ABC recommendations, the Councils decided to revise the ACLs for Spanish mackerel. Therefore, the Framework Amendment would increase the ACL for Atlantic migratory group Spanish mackerel from 5.69 million lb (2.58 million kg) to 6.063 million lb (million kg). Based on the current allocations, the ACL would be allocated 55 percent to the commercial sector and 45 percent to the recreational sector. The proposed rule would also include the ACT for Atlantic migratory group Spanish mackerel. The Framework Amendment would increase the Gulf migratory group Spanish mackerel ACL to 12.7 million lb (5.76 million kg) for the 2014–2015 fishing year, 11.8 million lb (5.35 million kg) for the 2015–2016 fishing year, and 11.3 million lb (5.13 million kg) for the 2016–2017 fishing year and subsequent fishing years. The Framework Amendment would also update the OY for Atlantic migratory group Spanish mackerel.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the commercial and recreational ACLs and the recreational ACT for Atlantic migratory group Spanish mackerel, and revise the stock ACL for Gulf migratory group Spanish mackerel. Additionally, this proposed rule would revise the adjusted commercial quota for Atlantic migratory group Spanish mackerel, based on the revised commercial ACL (commercial quota).

Revise the Commercial and Recreational ACLs and Recreational ACT for Atlantic Migratory Group Spanish Mackerel

This proposed rule would increase the commercial ACL (equal to the commercial quota) for Atlantic migratory group Spanish mackerel to be 3.33 million lb (1.51 million kg) and the recreational ACL to be 2.727 million lb (1.236 million kg). The recreational ACT would increase to 2.364 million lb (1.072 million kg).

Revise the Stock ACL for Gulf Migratory Group Spanish Mackerel

This proposed rule would increase the stock ACL for Gulf migratory group Spanish mackerel to 12.7 million lb (5.76 million kg) for the 2014–2015 fishing year, 11.8 million lb (5.35 million kg) for the 2015–2016 fishing year, and 11.3 million lb (5.13 million kg) for the 2016–2017 fishing year and subsequent fishing years.

Revise the Adjusted Quota for Atlantic Migratory Group Spanish Mackerel

This proposed rule would revise the adjusted commercial quota for Atlantic migratory group Spanish mackerel from 2.88 million (1.31 million kg) to 3.08 million lb (1.40 million kg), based on the increase of the commercial ACL (commercial quota) for Atlantic migratory group Spanish mackerel. The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest is still subject to the ACL and accountability measures.

Additions to Codified Text

This proposed rule would also include additions to the introductory paragraphs for the CMP Quotas and ACLs/AMs/ACTs sections (50 CFR 622.384 and 50 CFR 622.388) to include language that all weights are in round and eviscerated weight combined, unless specified otherwise. This language is being added to clarify that the quotas, ACLs, and ACTs are established using landings that are documented in both round weight (whole weight) and eviscerated weight (gutted weight).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Framework Amendment, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This proposed rule is expected to directly affect commercial fishermen and for-hire operators in the South Atlantic, Mid-Atlantic, and Gulf. The SBA established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.5 million (NAICS code 487210, fishing boat charter operation). The SBA periodically reviews and changes, as appropriate, these size criteria. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647). That rule increased the size standard for commercial finfish harvesters from $19.0 million to $20.5 million and the size standard for for-hire vessels from $7.0 million to $7.5 million.

From the 2007–2008 through 2011–2012 fishing years, an annual average of 387 vessels with valid commercial Spanish mackerel permits landed at least 1 lb (0.6 kg) of Atlantic migratory group Spanish mackerel. These vessels generated average dockside revenues of approximately $11.99 million (2011 dollars) from all species caught during the fishing year. Each vessel, therefore, generated an average of approximately $31,000 in gross revenues. For the same period, an annual average of 208 vessels with valid commercial Spanish

mackerel permits landed at least 1 lb (0.6 kg) of Gulf migratory group Spanish mackerel. These vessels generated dockside revenues of approximately $10.33 million (2011 dollars) from all species caught during the fishing year. Each vessel, therefore, generated an average of approximately $49,700 in gross revenues. Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From the 2007–2008 through 2011–2012 fishing years, an annual average of 1,813 vessels had valid or renewable South Atlantic charter/headboat permits for CMP fish. As of May 2, 2014, 1,395 vessels held these permits and about 77 are estimated to have operated as headboats in 2014. For the same period, an annual average of 1,424 vessels had valid or renewable Gulf charter/headboat permits for CMP fish. As of May 2, 2014, 1,202 vessels held these permits and about 67 are estimated to have operated as headboats in 2014. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) for charter boats are estimated to be $53,730 for Texas vessels, $110,977 for Louisiana vessels, $59,960 for Mississippi and Alabama vessels, $81,264 for West Florida vessels, $126,032 for East Florida vessels, $53,443 for Georgia vessels, $100,823 for South Carolina vessels, and $101,959 for North Carolina vessels. For headboats, the corresponding estimates are $247,629 for Texas, Louisiana, Mississippi, and Alabama vessels, $232,884 for West Florida vessels, $209,507 for East Florida vessels, and $153,848 for Georgia, South Carolina, and North Carolina vessels. Revenue figures for combined states are aggregated to avoid disclosure of confidential information. For the Northeast (states north of North Carolina), the average gross revenues are approximately $220,755 and $28,884 for headboats and charter vessels, respectively. The Northeast information is not currently available on a state by state basis. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

This proposed rule would increase the commercial ACL (equal to the commercial quota), recreational ACL, and recreational ACT for Atlantic migratory group Spanish mackerel. This action is expected to slightly increase the revenues and possibly profits for commercial and for-hire vessels. The only other alternative for this action is to retain the current commercial and recreational ACL and recreational ACT (no action alternative), which would lead to forgoing the economic benefits that would accrue from the proposed rule.

As a consequence of the commercial ACL (quota) increase for Atlantic migratory group Spanish mackerel, this proposed rule would increase the adjusted quota before the current 500 lb (227 kg) trip limit would take effect. This would likely allow for a longer commercial fishing season before this trip limit applies, thus generating more revenues for commercial vessels.

This proposed rule would also increase the stock ACL for Gulf migratory group Spanish mackerel. In principle, this is expected to substantially increase the revenues and possibly profits for commercial and for-hire vessels because the proposed stock ACL would be more than twice the current stock ACL. However, the current stock ACL for Gulf migratory group Spanish mackerel has not been met for the 2000–2001 through 2013–2014 fishing years, so the potential increase in economic benefits may not be realized in the near future. The only other alternative to this action is to retain the current stock ACL for Gulf migratory group Spanish mackerel, which would result in no changes in the economic impact to impacted entities.

This proposed rule would also revise the introductory paragraphs for the CMP Quotas and ACLs/AMs/ACTs sections to include language that all weights are given in round or eviscerated weight unless specified otherwise. This would not affect the reporting requirements as this is the current rule but located in another section of the regulations.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Annual catch target, Fisheries, Fishing, Gulf, Quotas, South Atlantic, Spanish mackerel.

Dated: July 28, 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 part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.384, a sentence is added at the end of the introductory paragraph and paragraph (c)(2) is revised to read as follows:

§ 622.384 Quotas.

* * * All weights are in round and eviscerated weight combined, unless specified otherwise.

* * * * *

(c) * * *

(2) *Atlantic migratory group.* The commercial quota for the Atlantic migratory group of Spanish mackerel is 3.33 million lb (1.51 million kg).

* * * * *

3. In § 622.385, the first sentence in paragraph (b)(2) is revised to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.08 million lb (1.40 million kg). * * *

* * * * *

■ 4. In § 622.388, an introductory paragraph is added and paragraph (c)(3) and the last two sentences of paragraph (d)(2)(i) are revised to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

All weights are in round and eviscerated weight combined, unless specified otherwise.

* * * * *

(c) * * *

(3) The stock ACL for Gulf migratory group Spanish mackerel is 12.7 million lb (5.76 million kg) for the 2014 to 2015 fishing year, 11.8 million lb (5.35 million kg) for the 2015 to 2016 fishing year, and 11.3 million lb (5.13 million kg) for the 2016 to 2017 fishing year and subsequent fishing years.

(d) * * *

(2) * * *

(i) * * * The recreational ACT for the Atlantic migratory group is 2.364

million lb (1.072 million kg). The recreational ACL for the Atlantic migratory group is 2.727 million lb (1.236 million kg).

* * * * *

[FR Doc. 2014–18026 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140113040–4040–01]

RIN 0648–BD90

Fisheries of the Exclusive Economic Zone Off Alaska; Monitoring and Enforcement; At-Sea Scales Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to revise the at-sea scales program for catcher/processor vessels (C/Ps) and motherships that are required to weigh catch at sea. This action would make three major changes to current regulations. First, this action would change regulations to enhance daily scale testing and require electronic reporting of daily scale test results. Second, this action would require that scales used to weigh catch have electronics capable of logging and printing the frequency and magnitude of scale calibrations, as well as the time and date of each scale fault and scale startup. Third, this action would require that the scale and the area around the scale be monitored using video. Finally, this action would revise technical regulations that are no longer applicable. This action is being proposed to reduce the possibility of scale tampering and to improve the accuracy of catch estimation by the C/P and mothership sector. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Written comments must be received on or before September 2, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0006, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0006,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (Analysis) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* An electronic copy of the Guidelines for Economic Review of National Marine Fisheries Service Regulatory Actions may be obtained from *http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The fishery management plans (FMPs) were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.

Background

The at-sea scales program (Program) was developed in the mid-1990's to provide catch accounting methods for vessels, specifically C/Ps, that were more precise and verifiable and less dependent on estimates generated by at-sea observers. Improved catch estimation was necessary because of the implementation of large-scale catch share programs. NMFS determined that effective monitoring and enforcement of catch share programs require verifiable and precise estimates of quota harvest. Because catch share programs limit vessel operators to specific amounts of catch, vessel operators have an increased incentive to underreport catch to fish beyond specific catch limits. A method for independently verifying catch, such as a requirement to weigh catch on a scale, reduces the ability of vessel operators to underreport catch.

Because C/Ps do not deliver their catch onshore where land-based scales can be used, catch must be weighed at sea. The requirements for weighing catch at sea were first implemented in 1998 (63 FR 5836, February 4, 1998) for trawl C/Ps participating in the Multi-Species Community Development Quota (MS CDQ) program. The Program was expanded significantly in 2000 as a result of statutory requirements of the American Fisheries Act (AFA) that required all at-sea catch by specified vessels in the Bering Sea and Aleutian Islands (BSAI) pollock fishery to be weighed (see 65 FR 4520, January 28, 2000). In 2006 and 2007, the Program was further expanded to include trawl C/Ps participating in the Central Gulf of Alaska rockfish pilot program (71 FR 67210, November 20, 2006) and non-AFA trawl C/Ps participating in BSAI trawl fisheries (72 FR 52668, September 14, 2007). Finally, the Program was expanded in 2013 to include longline C/Ps that participate in BSAI Pacific cod fisheries (77 FR 59053, September 26, 2012). Since its inception, the Program has grown significantly, from fewer than 10 participating vessels in 1998 to over 60 vessels today.

The Program is dependent on two types of motion-compensated electronic scales. The first is a platform scale with

a capacity between 50 and 60 kg that is used by NMFS-certified observers (observers) to perform part of their sampling duties and to verify the accuracy of the second type of motion-compensated scale—a flow scale. A flow scale, or self-contained belt scale, is capable of continuously weighing up to 100 metric tons (mt) of fish per hour and is used by the vessel to weigh either total catch or quota species (species allocated under a catch share program).

When the Program was developed in 1998, NMFS understood that rigorous scale approval and monitoring provisions would be necessary to ensure the accuracy of scales. The Program NMFS developed included three levels of regulatory oversight. First, each model of scale approved by NMFS for use at sea must have been tested by an independent laboratory and found to meet specified standards of accuracy and reliability. Second, NMFS-authorized inspectors must inspect each scale annually to ensure that it remains accurate, has been adequately maintained, and is properly installed. Third, each scale must be tested daily by vessel crew when in use and must be accurate within +/− 3 percent when compared against a platform scale used by observers. In turn, the vessel crew compares the flow scale against test weights of a known weight to ensure its accuracy. The first two components of the scale-monitoring provisions are similar to standards in place for the approval of land scales used in trade applications throughout the United States. The third component, daily testing of at-sea scales, is necessary because the demanding environment where these scales are used can cause scales to become inaccurate due to vessel motion, temperature and humidity changes, onboard power fluctuations, or other factors. The background section of the Analysis provides additional detail on the scale approval and monitoring process.

NMFS researched the best available technology before developing at-sea scale regulatory standards. However, since the Program was implemented (1998), there have been significant technological improvements. First, vessels are now able to communicate quickly and easily with NMFS while at sea using an electronic logbook (ELB) to report catch and effort information. When the Program was implemented in 1998, ELB was in early development stages and its use was not required. Now, the majority of vessels that are required to weigh catch at sea are also required to report catch daily using an ELB. Second, scale technology and onboard computer technology have advanced significantly; when the Program was implemented in 1998, the internal data storage capacity of the scales was very limited. Given the available data storage capacity in 1998, NMFS determined that the most important information to retain in the scale memory was the weight of the prior 10 hauls and an audit trail that described modifications made to the operation of the scale that could affect its accuracy (i.e., repair or maintenance of mechanical equipment needed for weighing catch). However, the current generation of scales is significantly easier to program and offers significantly more onboard data storage capacity allowing the retention of more information. The first generation scale electronics are reaching the end of their functional lives and are being replaced by the new generation of scales with considerably more sophisticated electronics. As noted in Section B of the Analysis, only 19 out of 68 vessels with NMFS-approved flow scales continue to use first-generation scales, and NMFS anticipates that most of these first-generation electronics will be replaced by the time this proposed action would be implemented, if approved. Finally, at the time the Program was first implemented in 1998, the vessels that were required to use scales did not have onboard video systems; nor were these vessels subject to video monitoring. Since that time, NMFS has developed monitoring regulations that require the majority of the vessels using at-sea scales to provide video monitoring to monitor the flow of catch.

The Proposed Action

This proposed action would affect the owners and operators of the following C/Ps and motherships that are required to weigh catch at sea:

- Trawl C/Ps permitted for pollock in the BSAI under the AFA;
- Motherships permitted to receive deliveries of pollock in the BSAI under the AFA;
- Trawl C/Ps permitted to fish for groundfish under Amendment 80 to the BSAI FMP;
- Trawl C/Ps permitted to fish for rockfish in the Central Gulf of Alaska (GOA);
- Longline C/Ps with a license limitation program license endorsed for C/P operations that fish for Pacific cod using hook-and-line gear in the Bering Sea (BS) or Aleutian Islands (AI) areas: and
- C/Ps that harvest catch in the BSAI under the CDQ program.

All C/Ps and motherships that harvest catch in the BSAI under the MS–CDQ program would be subject to the same requirements as all other vessels that are required to weigh groundfish catch at sea under this proposed action. Therefore, this proposed action would be consistent with section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act, that requires that CDQ fisheries ''shall be regulated by the Secretary [NMFS] in a manner no more restrictive than for other participants in the applicable sector.''

This proposed action would: (1) Change daily scale testing requirements; (2) change flow scale software requirements; (3) require video monitoring; and (4) make other minor changes that would be needed to effectively implement the proposed action. Each of these proposed changes is described in more detail below.

Changes to Daily Scale Testing Requirements

Currently, operators of vessels required to use at-sea scales must test each scale once during every 24 hours when use of the scale is required under regulations at § 679.28(b)(3). This is commonly known as the daily scale test. In order to test the scale, the vessel crew weighs at least 400 kg of fish or sand bags on the flow scale and on the platform scale used by NMFS-certified observers. The results from the daily scale tests on the two scales must agree within +/− 3 percent of each other, commonly known as the 3 percent standard. At least one daily scale test that meets the 3 percent standard must be recorded in writing and signed by the vessel operator. If the flow scale does not meet the 3 percent standard, the flow scale is cleaned, serviced, and then retested. Under current regulations at § 679.28(b)(iii)(C), vessel owners and operators are required to retain the results of each daily scale test on board for the duration of the fishing year, but they are not required to submit those test results to NMFS. In most cases, the results of these daily scale tests are reviewed by NMFS only at the time of the annual scale inspection after the fishing season is over.

NMFS established the 3 percent standard based on preliminary testing results when the Program was first implemented (see 63 FR 5836, February 4, 1998) and reviewed that standard based on an analysis of daily scale testing results from 2010 (see Section A.5 of the Analysis). NMFS has determined that the 3 percent standard represents an appropriate compromise between the need for accurate weights and to minimize the number of times vessels would need to return to port for maintenance to correct minor discrepancies in daily scale test results.

However, based on Section A.5 of the Analysis, the mean scale test error is negative. This indicates that there is a bias in the weights obtained from the daily scale tests that result in weights being under reported. Section A.5 of the Analysis provides a detailed description of the numerous factors that can bias daily scale tests and result in an underestimation of the weight of catch.

To address this potential bias, NMFS proposes four changes to the daily scale test requirements at § 679.28(b)(3). First, NMFS would modify regulations at § 679.28(b)(3)(i)(B) to require that the vessel operator test the scales with material supplied by the scale manufacturer or approved by a NMFS-authorized scale inspector. This proposed change would ensure that appropriate material, such as sand bags or material supplied by the scale manufacturer, is used instead of fish. Sand bags are a more consistent weight than fish because they do not dry between being weighed on the flow scale and being weighed on the platform scale. This change would ensure consistent weights of the test material, better accuracy, and reduce the potential for bias to be introduced by changes in the test weight due to water loss from the fish between flow scale and platform scale tests.

Second, NMFS would add regulations at § 679.5(f)(1)(ix) to require that the vessel operator electronically report the results and timing of daily scale tests each day to NMFS in the vessel's ELB. This addition would allow NMFS employees to continuously monitor daily scale tests by vessels when they are at sea and to work with vessel crew to ensure that any bias in daily scale tests could be discovered and corrected quickly.

Third, NMFS would add regulations at § 679.5(f)(1)(ix) to require the reporting of all daily scale tests, whether passed or failed, to NMFS. Currently, vessel operators are allowed to test their scales as frequently as they want, but are only required to record the results from a single daily scale test that meets the 3 percent standard during each 24-hour period when use of the scale is required. In most cases, failed daily scale tests are not reported, and NMFS does not know how many daily scale tests were completed before the scales met the 3 percent standard. Some vessels also test their scales multiple times even when the scales are meeting the 3 percent standard in order to report only the best (i.e., lowest error) result. Over time, such practices would create a consistent bias that would result in underreporting of catch.

Finally, NMFS would modify regulations at § 679.28(b)(3) to clarify that a daily scale test must be conducted one time during each calendar day when use of the scale is required, with testing intervals not to exceed 24 hours. Current regulations at § 679.28(b)(3) state that scales must be tested ''one time during each 24-hour period when use of the scale is required.'' The intent of the original regulation was to ensure that scales were tested at no greater than 24-hour intervals. However, the current regulation could be interpreted in a manner that does not provide a daily scale test for each calendar day, which could result in a gap of more than 24-hours between tests. For example, if a daily scale test is performed at 9:00 p.m. on day 1, and at 8:59 p.m. on day 3, a total of almost 48 hours has elapsed. However, if a ''24-hour period'' is interpreted as lasting from 9:00 p.m. on day 1 to 8:59 p.m. on day 2, and another ''24-hour period'' is interpreted as lasting from 9:00 p.m. on day 2 to 8:59 p.m. on day 3, the scale will have been tested once during each of these ''24-hour periods,'' yet not at all during calendar day 2. The proposed provision to require the vessel operator to conduct a daily scale test one time during each calendar day when use of the scale is required, with testing intervals not to exceed 24 hours, would clarify the daily scale test requirements and regular scale testing.

Changes to Flow-Scale Software Requirements

This proposed rule would improve the ability of NMFS to detect two of the greatest potential sources of bias in the weight reported by the flow scale, which are flow scales that do not weigh correctly due to being in a fault mode, and the incorrect calibration of flow scales.

A fault is any condition detected by the scale electronics that has the potential to affect the metrological accuracy of the scale. Many factors will put the scale into a fault mode. Some fault modes have more significant effects than others. For example, a slipping belt will generally cause a fault and, if left uncorrected, could result in a dramatic overestimation of the amount of fish passing over the scale. Other fault modes, such as when the scale is weighing catch at a low rate of flow, are of only technical significance, and NMFS has seen no evidence that this condition affects scale accuracy. When flow scales are well maintained, they can be quite accurate. With proper maintenance, scale faulting should be a fairly rare occurrence. However, lack of maintenance and deliberate tampering can cause a substantial increase in the frequency of scale faults. NMFS is not able to quantify the frequency or cause of scale faults under current regulations. Limited information obtained from a review of video from vessels with video monitoring in the vicinity of the scale indicates that scale faulting may be widespread (see Section B of the Analysis for additional detail). Requiring vessel operators to log all faults as they occur would allow NMFS to better monitor the condition of scales. This would help prevent deliberate tampering with the scale that would result in faults and inaccurate weighing of catch.

Unlike land-based scales, at-sea scales generally require frequent calibration to ensure that the scale is correctly adjusted to a known reference weight. At-sea scale calibrations are required more frequently under some circumstances, such as a dramatic change in vessel motion due to sea conditions, or due to a change in vessel direction. Because it is not possible to predict when scale calibrations are needed at sea, it is impractical for NMFS to set a minimum or maximum number of calibrations that a vessel must conduct each day. In addition, at-sea scale calibrations can be deliberately performed improperly in order to cause the scale to weigh incorrectly. Section B of the Analysis details the factors that can lead to improper calibration. In those cases where improper calibrations result in the systematic underreporting of catch, NMFS expects the vessel crew would calibrate the scale properly prior to the daily scale test, and improperly after the test. Because of improvements made to scale electronics, it is now possible to record the magnitude and direction of calibrations relative to the previous calibration. It is also possible to record the time a calibration occurred. Section B of the Analysis describes the capabilities of the current generation of at-sea scales to retain and record calibration data. Requiring the retention and reporting of calibration data could be used to detect deliberate miscalibration, thereby reducing the likelihood of underreporting of catch.

To resolve these fault and calibration issues, this proposed action would add two new requirements to the at-sea scale printed report requirements at §§ 679.28(b)(5)(iii) and (b)(5)(iv). The latest at-sea scales software can save and print out calibration and fault logs. NMFS would add regulations at § 679.28(b)(5)(iv) to require vessel operators to print and retain a fault log that records the last 1,000 faults and scale startups, or all faults and startups since the scale electronics were first put

into service, whichever is less. NMFS would add regulations at § 679.28(b)(5)(iii) to require vessel operators to print and retain a calibration log that records the last 1,000 calibrations or all calibrations since the scale electronics were first put into service, whichever is less. NMFS expects the limit of 1,000 faults and 1,000 calibrations would accommodate the total number of calibrations likely to occur between annual scale inspections. NMFS would not require submission of the printed record of the scale fault log and calibration log, but would collect and review those data at the time of the annual scale inspection. Those data will also be available to the NOAA Office of Law Enforcement (OLE) in cases where scale tampering is suspected.

NMFS intends that the proposed modifications to fault and calibration reporting would be effective in early 2015. However, this proposed action would add regulations at § 679.28(b)(5)(v) to clarify that the proposed fault and calibration reporting requirements would be delayed for vessels that receive a scale inspection after March 1, 2014, and before December 31, 2014, until the time of that vessel's next scale inspection in 2015. C/Ps and motherships receive a NMFS-conducted scale inspection on an annual basis. Because of the timing of some fisheries, NMFS tests some vessels' at-sea scales during the spring and summer. For example, NMFS does not conduct longline C/P vessel scale inspections until after March 1 of each year. Because NMFS anticipates that this rule will become effective at the beginning of 2015 (if approved), vessels that are inspected in the spring and summer of 2014 will be using scales that were approved prior to the effective date of the rule, and with an approval that would not expire until at least mid-year in 2015.

Without this proposed clarification, vessels that are normally inspected in the spring and summer would be required to have an additional scale inspection at the beginning of 2015. Scale inspections for these vessels are challenging because most of these vessels are docked in Alaska and without crew at the beginning of the year. Performing annual scale inspections for all affected C/Ps at the beginning of the year would present significant logistical difficulties and increased costs for both NMFS and the vessel owners and at-sea scale providers. NMFS believes that allowing these vessels to continue operations until they are required to conduct their annual scale inspections in 2015 would make the transition to these new regulations less administratively burdensome and would significantly reduce costs to vessels. NMFS does not expect that this provision would be needed for trawl C/Ps and motherships because those vessels typically conduct their scale inspections at the beginning of a year. However, this provision would not exclude any vessel that is required to carry at-sea scales and that received its annual scale inspection after March 1, 2014, and before December 31, 2014.

Addition of Video Monitoring

In 1998, when the at-sea scales regulations were first promulgated, no vessel fishing off Alaska was required to participate in a video monitoring program, and the use of video on fishing vessels was experimental. Now, 61 out of the 68 vessels that would be directly regulated by this action are required to provide some form of video monitoring in the vicinity of the at-sea scale, and broad use of video to monitor compliance for some aspect of catch monitoring on C/Ps is now routine. C/Ps and motherships participating in BSAI pollock fisheries are required to use video to monitor the sorting and retention of salmon under regulations found at § 679.28(j), which generally take place immediately after catch is weighed on the flow scale. Trawl C/Ps authorized to fish for groundfish under Amendment 80 to the BSAI FMP or rockfish in the Central Gulf of Alaska often use video to monitor the crew activities inside fish bins (see regulations at § 679.28(i)(1)(iii)). Longline C/Ps that would be affected by this action are currently required to use video to ensure that all Pacific cod are weighed on the flow scale (see regulations at § 679.28(k)).

Although the video data collected from these vessels are intended to meet other monitoring objectives, the data collected from existing video monitoring programs have been instrumental in demonstrating that flow scale manipulation is occurring, and that scale faulting is more frequent than NMFS believed. Without the broad documentation provided by existing video data, NMFS would have had a more difficult time determining how the at-sea scale program needed to be changed in order to prevent misreporting and ensure scale accuracy. The video required on trawl vessels, however, is required under monitoring regulations that are unrelated to monitoring flow scale use. While the video data from trawl vessels have provided information on scale faults and manipulation, the requirements for camera placement under the other monitoring regulations often do not provide for direct and consistent monitoring of flow scale use. The proposed provisions for video monitoring of the area around the flow scale would assist NMFS management and enforcement in ensuring that all required catch weighing takes place properly.

This proposed action would require video monitoring of the flow scale and the area surrounding the flow scale. Specifically, NMFS would modify regulations at § 679.28(e) to require vessel owners to provide cameras, a digital video recorder, and a video monitor that are able to:

- Provide sufficient resolution and field of view to monitor the flow scale used by the vessel to weigh catch. The coverage would need: to be sufficient to clearly show the activities of any individual working on the scale; to clearly show all fish passing over the scale; and to show the scale display itself.
- Provide sufficient resolution to show if any fault light associated with the scale is on or flashing.
- Have sufficient data storage capacity to store all video data from an entire trip.
- Time/date stamp each frame of video in Alaska local time (A.l.t.).
- Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.
- Use color cameras that have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.
- Record at a speed of no less than 5 unique frames per second at all times.
- Provide a 16-bit or better color monitor that can display all cameras simultaneously.

The vessel operator would be required to maintain data from the system on board for at least 120 days and make the data available to NMFS employees, or any individual authorized by NMFS, upon request. The system would have to be inspected by NMFS annually in one of three designated ports (Dutch Harbor, Kodiak or the Puget Sound area) to ensure that it meets the above standards. If the system meets the above standards during the inspection, NMFS would provide approval in the form of a Video Monitoring Inspection Report that must be maintained aboard the vessel for the entire year. If the vessel owner wants to change any aspect of the video monitoring system that would affect the system's functionality, such as moving the location of a camera, the vessel

owner would submit to the Regional Administrator a written request to change the video monitoring system.

Changes to Video Monitoring Technical Requirements

As described above, video monitoring is already required for most C/Ps and motherships fishing off Alaska. All of these vessels are subject to very similar, but in some cases not identical, technical requirements. In the past, minor inconsistencies among various fleets have not been problematic because the requirements apply to separate fleets. However, NMFS believes most of the vessels will use or expand an existing NMFS-approved monitoring system to comply with the requirement to monitor the scale area (see section C of the Analysis). NMFS intends that technical requirements for all vessels and systems would be identical to avoid confusion and to prevent inconsistencies that could make compliance with the new video monitoring requirements more difficult. Table 1 shows: (1) The current video regulations for each of the affected fleets; and (2) the proposed regulatory revisions and consolidation that would create consistent technical video requirements applicable to all affected fleets.

TABLE 1—CURRENT—AND PROPOSED—TECHNICAL VIDEO REGULATIONS

Current technical video regulations			Proposed revisions and consolidation of technical video regulations (applicable to all C/Ps and motherships required to weigh catch at sea and all vessels currently subject to other video monitoring requirements)
Amendment 80 and Central Gulf of Alaska Rockfish, including CDQ	C/Ps and motherships directed fishing for pollock in the BS, including pollock CDQ	Longline C/Ps operating in BSAI or GOA when directed fishing for Pacific cod is open in the BSAI, including groundfish CDQ fishing	
The video data must be maintained and made available to NMFS employees or any individual authorized by NMFS, upon request. These data must be retained on board the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period. (§ 679.28(i)(1)(iii)(E))	The video data must be maintained and made available to NMFS employees, or any individual authorized by NMFS, on request. The data must be retained on board the vessel for no less than 120 days *after the date the video is recorded,* unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period. (§ 679.28(j)(1)(v))	The video data must be maintained and made available to NMFS employees, or any individual authorized by NMFS, on request. The data must be retained on board the vessel for no less than 120 days *after the date the video is recorded,* unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period. (§ 679.28(k)(3))	The video data must be maintained and made available to NMFS employees, or any individual authorized by NMFS, on request. The data must be retained on board the vessel for no less than 120 days *after the date the video is recorded,* unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period. (§ 679.28(e)(v)).
Color cameras must have at a minimum 420 TV lines of resolution, a lux rate of 0.1, and auto-iris capabilities. (§ 679.28(i)(1)(iii)(D))	Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition. (§ 679.28(j)(1)(iv))	Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition. (§ 679.28(k)(1)(v))	Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition. (§ 679.28(e)(iv))
The system uses commercially available software. (§ 679.28(i)(1)(iii)(C))	The system must use commercially available software. (§ 679.28(j)(1)(iii))	Use commercially available software. (§ 679.28(k)(1)(iv))	The system must output video files to an open source format or the vessel owner must provide software capable of converting the output video file to an open source format or commercial software must be available for converting the output video file to an open source format. (§ 679.28(e)(1)(iii))
How does a vessel owner make a change to the video monitoring system? Any change to the video monitoring system that would affect the system's functionality must be submitted to, and approved by, the *Regional Administrator* in writing before that change is made. (§ 679.28(i)(1)(iii)(K))	*How does a vessel owner make a change to the video monitoring system?* Any change to the video monitoring system that would affect the system's functionality must be submitted to, and approved by, the *Regional Administrator* in writing before that change is made. (§ 679.28(j)(4))	Any change to the electronic monitoring system that would affect the system's functionality or ability to meet the requirements at paragraph (k)(1) of this section must be submitted to, and approved by, NMFS in writing before that change is made. (§ 679.28(k)(7))	*How does a vessel owner make a change to the video monitoring system?* Any change to the video monitoring system that would affect the system's functionality must be submitted to, and approved by, the *Regional Administrator* in writing before that change is made. (§ 679.28(e)(5))

On a practical level, requiring identical video monitoring requirements would not substantively affect vessels with currently approved electronic monitoring systems. The proposed regulations would make several minor changes to the existing electronic monitoring system requirements. First, NMFS would modify regulations at § 679.28(e)(1)(v) to require vessel operators to retain video data for 120 days after recording. Video data from the longline C/P subsector and C/Ps and motherships in the BSAI pollock fisheries currently must be retained for 120 days after recording as shown in the first row of Table 1. Video data used for bin monitoring under Amendment 80 to the BSAI FMP or rockfish in the Central Gulf of Alaska must be retained for 120 days after the beginning of a trip. This

proposed action would modify regulations to use the less restrictive retention requirement of 120 days after recording, which would slightly reduce the burden for vessels required to provide bin monitoring under Amendment 80 to the BSAI FMP or rockfish in the Central Gulf of Alaska.

Second, NMFS proposes to modify the equipment requirements at § 679.28(e)(1)(iv) to revise and consolidate camera specification requirements as shown in second row of Table 1. Camera specifications for bin monitoring under Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska differ slightly from the specifications for the longline C/P subsector and C/Ps and motherships in the BSAI pollock fisheries. Currently, camera specifications for bin monitoring under Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska require a lux capacity (amount of available light needed for cameras to record images) for the cameras, while the specifications for the longline C/P subsector and C/Ps and motherships in the BSAI pollock fisheries require auto-iris capabilities that provide the ability to revert to black and white when light levels become too low for color recognition. All cameras currently in use under regulations for Amendment 80 to the BSAI FMP, rockfish in the Central Gulf of Alaska, the longline C/P subsector, and C/Ps and motherships in the BSAI pollock fisheries meet the standards proposed by this action. This proposed change, as shown in second row of the above table, therefore would not affect current or anticipated use of cameras.

Third, NMFS would modify regulations at § 679.28(e)(1)(iv) to require color cameras with 470-lines of resolution, which is also included in the second row of Table 1. Current video bin monitoring regulations for vessels under Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska require a color camera with 420-line resolution, but the other video monitoring system regulations for the longline C/P subsector and C/Ps and motherships in the BSAI pollock fisheries require vessel operators to provide a color camera with 470-line resolution. NMFS expects this proposed change would not affect existing vessel operations, including vessels regulated under Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska, because all currently approved color cameras provide at least 470 lines of resolution.

Fourth, NMFS would modify regulations at § 679.28(e)(1)(iii) to require that the video system must output a video file that is open source (free and universally accessible software) or that can be converted to an open source format using commercially available or vessel-provided software. Current regulations for all video monitoring systems require that the system use commercially available software to view, record, playback and download video. The intent of current regulations was to allow NMFS employees and authorized agents to review the video imagery that is output by the system; however, NMFS does not need the entire software package that records video and allows it to be reviewed. Some security camera systems use software that is not commercially available outside of the system itself, but the systems are able to output an open source video file. Since the output format is the portion of the video NMFS needs for reviewing video, this action would revise regulations to allow open source video files. This proposed change would improve the ability for NMFS to review video data. This proposed change and the current regulations are shown in the third row of Table 1.

Finally, NMFS would modify and consolidate video approval regulations at § 679.28(e)(5). Vessels subject to the bin monitoring regulations for Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska and C/Ps and motherships in the BSAI pollock fisheries that want to make any change to their video monitoring systems must obtain approval from the Regional Administrator, but vessels under the longline C/P subsector must obtain approval from NMFS. However, despite the regulatory difference requiring approval either by the ''Regional Administrator'' or ''NMFS'' depending on the program, the approval process for all three programs is administered identically; therefore, this proposed action would consolidate these regulations to require approval by the Regional Administrator. This administrative change would not substantively affect operations or regulatory compliance for any vessel and is shown in the fourth and final row of Table 1.

NMFS notes that it would implement these proposed changes by consolidating the technical, annual inspection and approval, and data retention requirements for all video monitoring in regulations at § 679.28(e). Existing regulations at § 679.28(e) contain outdated and unused regulations concerning bin volumetrics. NMFS would modify § 679.28(e) to remove existing bin volumetrics regulations as discussed below in the section ''Other Minor Changes made by this Rule.''

The video monitoring requirements specific to bin monitoring for Amendment 80 to the BSAI FMP and rockfish in the Central Gulf of Alaska would remain at § 679.28(i)(1)(iii). However, technical and data retention requirements at § 679.28(i)(1)(iii) would be removed and replaced with a reference to requirements in revised regulations at § 679.28(e). The video monitoring requirements specific to C/Ps and motherships in the BSAI pollock fisheries would remain in § 679.28(j). Video monitoring requirements specific to the longline C/P subsector would remain in § 679.28(k). However, the technical, annual inspection and approval, and data retention requirements would be removed and replaced with a reference to requirements in revised regulations at § 679.28(e).

However, there are costs to the industry associated with the revised video requirements. As described in Section C of the Analysis, extending video coverage to capture images of the area around the flow scale and incorporating these proposed technical provisions described in the table would not represent a substantial cost, increase in technological complexity, or result in significant additional crew training requirements for vessels that currently deploy video systems. For the limited number of vessels that are not using video systems currently, these costs could be substantial depending on the system deployed and vessel configuration, but would be necessary to ensure adequate monitoring of at-sea scales. Section C of the Analysis describes the potential costs to these vessels in greater detail.

Other Minor Proposed Changes

This proposed rule would make several minor revisions to 50 CFR part 679 related to the equipment and operational regulations.

First, NMFS would revise the applicability paragraph of § 679.28 to remove the reference to bin volumetric estimates and to add a reference to include video monitoring systems. Regulations related to bin volumetrics are no longer applicable because flow scales are now used instead of bin volumetric measurements to determine the size of individual hauls. As noted in the previous section of this preamble, NMFS proposes to remove these regulations so any reference to those regulations is unnecessary. This action would also remove all other references to bin volumetrics in § 679.28(e) and replace that paragraph with the

technical requirements for video monitoring systems as discussed above. The reference to video monitoring systems is discussed in existing regulations throughout § 679.28 and would be included in this proposed action to accurately describe the specific requirements covered in regulations at § 679.28.

Second, NMFS would revise current regulations at § 679.28(b)(3)(i)(B) to allow daily scale tests to be performed with test material, such as sand bags, approved by a NMFS-authorized scale inspector or provided by the scale manufacturer. Existing regulations at § 679.28(b)(3)(i)(B) require that daily scale tests performed with material other than fish must use test material provided by the scale manufacturer. NMFS believes vessel operators must use an appropriate test material that will contribute to accurate scale testing. However, that material does not need to be furnished by the scale manufacturer.

Third, NMFS would revise regulations at §§ 679.100(a) and (b) to remove a requirement that longline C/P vessels authorized to participate in the directed fishery and opt in to that fishery must select a monitoring option at that time. Current regulations at § 679.100(a) require that a longline C/P authorized to participate in the directed fishery for Pacific cod in the BSAI must annually choose whether to opt in or out of that fishery. Vessels that opt in are required to select a monitoring option at that time and this ensures data from these vessels for catch accounting are administered correctly. NMFS has determined that the requirements to annually opt in or out of the BSAI Pacific cod longline C/P fishery and to select a specific monitoring option at that time are no longer necessary. Unless a longline C/P owner or operator notifies NMFS of a change to their selected monitoring option, NMFS will continue to use the same catch accounting method as the previous year. This proposed action would remove this annual monitoring selection requirement by revising §§ 679.100(a) and (b). This proposed change would clarify the requirements applicable to vessel operators in the longline C/P fleet and would reduce the fleet's reporting burden to select the same monitoring option that it used the previous year.

Fourth, NMFS would revise regulations at § 679.28(d)(9)(i) to simplify the observer sampling station inspection request regulations by removing a requirement that the vessel owner submit specific information when arranging for an observer sampling station inspection. Current regulations at § 679.28(d)(9)(i) require that a vessel owner provide the same information for an observer sampling station inspection request as is required for at-sea scale inspections in regulations at § 679.28. This change would not affect NMFS' ability to obtain information collected during the observer sampling station inspection process and would prevent duplicative reporting requirements.

Fifth, NMFS would revise regulations at § 679.28(i)(3) to clarify a vessel owner must submit an Inspection Request for Bin Monitoring at least 10 working days in advance of the requested date of inspection. Current regulations at § 679.28(i)(3) state that the inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. This change would not affect NMFS' ability to schedule inspections and would make the bin monitoring inspection request submission requirements match scale inspection request submission requirements.

Sixth, NMFS would revise regulations at § 679.28(i)(1)(ii) to remove unnecessary text describing the use of clear panels. Regulations at § 679.28(i)(1)(ii) require that vessels subject to bin monitoring requirements and that choose a ''line of sight'' option for monitoring bins must provide clear panels to allow the observation of activities in the fish holding bins. The existing regulatory requirement in § 679.28(i)(1)(ii) provides that ''[t]he observer must be able to view the activities of crew in the bin. . . .'' NMFS believes that this requirement is sufficient to adequately specify the needed requirements for the line of sight option for bin monitoring. This proposed modification removes an unnecessary restriction requiring the use of clear panels and clarifies existing regulations.

Seventh, NMFS would revise regulations at §§ 679.28(b)(3), 679.28(b)(3)(ii)(B)(*2*), and 679.28(d)(1) to remove references to weighing ''total catch.'' At the time the Program was implemented in 1998, C/Ps required to weigh catch at sea were required to weigh all catch. For vessels using trawl gear, this is appropriate because all species need to be accounted for as part of the catch accounting required for these vessels. Thus, the high capacity scales are frequently referred to as total catch weighing scales, or scales used to weigh total catch. However, longline C/Ps are now only required to weigh Pacific cod on a flow scale, and are not required to weigh the catch of other groundfish harvested incidental to Pacific cod. While the at-sea scales requirements for these longline C/Ps are nearly identical to the requirements for trawl vessels, the term ''total catch'' is inaccurate when applied to longline C/P scale requirements, and would be removed.

Eighth, NMFS would revise regulations throughout §§ 679.28 and 679.100 to remove the term ''electronic'' and replace it with the term ''video'' when specifically referring to video monitoring regulations. The term ''electronic monitoring'' can refer to a wide range of electronic monitoring requirements such as those applicable to vessel monitoring systems, ELBs, at-sea scales, and video. NMFS believes that replacing the term ''electronic'' with ''video'' when referring to video monitoring is more accurate and less confusing to the regulated vessels.

Lastly, NMFS would remove regulations at § 679.100(d) that applied only during 2013 and that allowed the owner of a longline C/P to change selected monitoring options mid-year. This provision is no longer applicable and the correction would remove outdated regulatory text.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council 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 certification is presented below. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Description and Estimate of the Number of Small Entities To Which the Rule Applies

This action would directly regulate firms with C/Ps that are required to use scales to account for catch at sea under various management programs. These programs include: trawl C/Ps permitted to fish for pollock in the BSAI under the AFA; motherships permitted to receive pollock in the BSAI under the AFA;

trawl C/Ps permitted to fish for groundfish under Amendment 80 to the BSAI FMP or rockfish in the Central Gulf of Alaska (GOA); longline C/Ps with a license limitation program license endorsed for C/P operations, Pacific cod, hook-and-line gear, and BS or AI areas; and C/Ps that harvest catch in the BSAI under the MS–CDQ program. These vessels and programs are described in more detail in the Analysis prepared for this proposed action (see **ADDRESSES**).

In each of these fleets, there are vessels authorized to participate in the fishery that do not do so. Depending on the fishery, this occurs because a company owns multiple vessels, but is able to harvest its entire quota without using all of the available boats; a company decides to use one of its vessels for those fisheries where weighing at sea is not required; or a vessel is not able to participate in the fishery because it is unusable or contractually prohibited from fishing. In the BSAI Pacific cod longline C/P fishery, vessels may choose to weigh all Pacific cod catch or provide additional observers in lieu of weighing all Pacific cod. Some vessels participating in this fishery have chosen to not install at-sea scales.

For the purposes of this analysis, NMFS has identified two classes of vessels that it estimates will be directly regulated by this action, if approved: (1) Vessels with flow scales that were inspected by NMFS employees in 2012 and/or 2013, and (2) three vessels under construction that NMFS expects to enter the longline C/P fleet in 2014 or 2015 and to use flow scales. NMFS estimates that there would be 68 unique vessels directly regulated by this proposed action.

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. Effective July 14, 2014 (79 FR 33647), a business involved in finfish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of $20.5 million for all its affiliated operations worldwide. A business involved in shellfish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of $5.5 million for all its affiliated operations worldwide. A business that both harvests and processes fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., finfish or shellfish).

NMFS has examined these vessels and their corporate and cooperative affiliations and has determined these vessels are predominately fishing for finfish and that their size for the purposes of the RFA is governed by the $20.5 million threshold. NMFS has also determined that all of these vessels have corporate and cooperative affiliations whose combined gross revenues exceed the $20.5 million threshold. All of these firms are affiliated through cooperative arrangements, whether through the AFA C/P Pollock Conservation Cooperative, one of the two cooperatives formed under the terms of Amendment 80 to the BSAI FMP, or the privately organized Freezer Longline Conservation Cooperative. Thus, none of the firms directly regulated by this action are small entities for the purpose of the RFA.

Estimate of Economic Impact on Small Entities, by Entity Size and Industry

Since there are no directly regulated small entities under this action, within the definition of small entities used in the RFA, there are no economic impacts from this action on small entities.

Criteria Used To Evaluate Whether the Rule Would Impose Impacts on ''a Substantial Number'' of Small Entities

This analysis uses the criteria described on page 28 in the NMFS guidelines for economic reviews of regulatory actions (see **ADDRESSES**):

> The term ''substantial number'' has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, ''substantial number'' depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The SBA casts ''substantial'' within the context of ''more than just a few'' or *de minimis* (''too few to care about'') criteria. In some cases, consideration of ''substantial number'' may go beyond merely counting the number of regulated small entities that are impacted significantly. For example, a fishery may have a large number of participants, but only a few of them may account for the majority of landings. In such cases, a substantial number of small entities may be adjudged to be significantly impacted, even though there may be a large number of insignificantly impacted small entities.
>
> Generally, a rule is determined to affect a substantial number of entities if it impacts more than just a few small entities. In a borderline case, the rule's effect on the structure of the regulated industry or the controversiality of the rule might tip the balance in favor of determining that a substantial number of entities would incur a significant adverse economic impact.

Because this rule will not impact any small entities, this criterion is inapplicable here.

Criteria Used To Evaluate Whether the Rule Would Impose ''Significant Economic Impacts''

The two criteria recommended for use in determining significant economic impacts are disproportionality and profitability. Disproportionality relates to the potential for the regulations to place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability relates to the potential for the rule to significantly reduce profits for a substantial number of small entities (Guidelines for NMFS Economic Review of Regulatory Actions: pp. 26–27; see **ADDRESSES**).

Description of, and an Explanation of the Basis for, Assumptions Used

Vessel cooperative affiliations were determined by NMFS staff, knowledgeable about the vessels in this fleet, and the entities' corporate and cooperative affiliations.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control No. 0648–0213

Public reporting burden is estimated to average 31 minutes per active response and 5 minutes per inactive response for Mothership Daily Cumulative Production Logbook (DCPL); with this action the mothership DCPL is removed and is replaced by the mothership ELB. 30 minutes per active response and 5 minutes inactive response for C/P trawl gear DCPL. 41 minutes per active response and 5 minutes per inactive response for C/P longline and pot gear DCPL.

OMB Control No. 0648–0330

Public reporting burden is estimated to average 45 minutes for daily record of flow scale test; 1 minute for printed reports from the calibration log; 1 minute for printed reports from the fault log; 6 minutes for request for inspection with a diagram, At-sea Scale; 2 hours for request for inspection w/diagram, Observer Sampling Station; 2 hours for request for inspection with a diagram, Flow Scale Video Monitoring System; 2 hours for request for inspection with a diagram, Freezer Longline Video

Monitoring System; 2 hours for request for inspection with a diagram, Chinook Salmon Bycatch Video Monitoring System; 2 hours for request for inspection with a diagram, Bin Video Monitoring System; and 30 minutes to notify NMFS of Pacific cod Monitoring Option.

OMB Control No. 0648–0515

Public reporting burden is estimated to average 15 minutes per active response and 5 minutes per inactive response for C/P ELB (both trawl gear and longline or pot gear); and 15 minutes per active response and 5 minutes per inactive response for Mothership ELB.

Estimated responses include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

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. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 28, 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 part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.5, add paragraph (f)(1)(ix) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(f) * * *

(1) * * *

(ix) *Catcher/processors and motherships required to weigh catch on NMFS-approved scales.* Catcher/processors and motherships required to weigh catch on a NMFS approved scale must use a NMFS-approved ELB. The vessel operator must ensure that each scale is tested as specified in § 679.28(b)(3) and that the following information from all scale tests, including failed tests, is reported within 24 hours of the testing using the ELB:

(A) The weight of test material from the observer platform scale;

(B) The total weight of the test material as recorded by the scale being tested;

(C) Percent error as determined by subtracting the known weight of the test material from the weight recorded on the scale being tested, dividing that amount by the known weight of the test material, and multiplying by 100.

(D) The time, to the nearest minute A.l.t. when testing began.

* * * * *

■ 3. In § 679.28,

■ a. Remove paragraph (b)(3)(iii)(C);

■ b. Revise paragraphs (a), (b)(3) introductory text, (b)(3)(i)(B), (b)(3)(ii)(B)(*2*), (b)(3)(iii)(B)(*7*), (b)(6), (d)(1), (d)(9)(i), (e), (i)(1)(ii) and (iii), (i)(3), (j), and (k); and

■ c. Add paragraphs (b)(5)(iii), (b)(5)(iv), (b)(5)(v) and (b)(8) to read as follows:

§ 679.28 Equipment and operational requirements.

(a) *Applicability.* This section contains the operational requirements for scales, observer sampling stations, vessel monitoring system hardware, catch monitoring and control plans, catcher vessel electronic logbook software, and video monitoring systems. The operator or manager must retain a copy of all records described in this section (§ 679.28) as indicated at § 679.5(a)(5) and (6) and make available the records upon request of NMFS observers and authorized officers as indicated at § 679.5(a)(5).

(b) * * *

(3) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph (b)(3), the vessel operator must test each scale or scale system used by the vessel to weigh catch at least one time during each calendar day. No more than 24 hours may elapse between tests when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) * * *

(B) *Test procedure.* The vessel operator must conduct a material test by weighing no less than 400 kg of test material, supplied by the scale manufacturer or approved by a NMFS-authorized scale inspector, on the scale under test. The test material may be run across the scale multiple times in order to total 400 kg; however, no single batch of test material may weigh less than 40 kg. The known weight of the test material must be determined at the time of each scale test by weighing it on a platform scale approved for use under paragraph (b)(7) of this section.

(ii) * * *

(B) * * *

(*2*) *Scales used to weigh catch.* Test weights equal to the largest amount of fish that will be weighed on the scale in one weighment.

(iii) * * *

(B) * * *

(*7*) Signature of vessel operator.

* * * * *

(5) * * *

(iii) *Printed reports from the calibration log.* The vessel operator must print the calibration log on request by NMFS employees or any individual authorized by NMFS authorized personnel, and the calibration log must be printed and retained by the vessel owner and operator before any information stored in the scale computer memory is replaced. The calibration log must detail either the prior 1,000 calibrations or all calibrations since the scale electronics were first put into service, whichever is less. The printout from the calibration log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, and year of the calibration;

(C) The time of the calibration to the nearest minute in A.l.t.;

(D) The weight used to calibrate the scale;

(E) The magnitude of the calibration in comparison to the prior calibration.

(iv) *Printed reports from the fault log.* The vessel operator must print the fault log on request by NMFS employees or

any individual authorized by NMFS, and the fault log must be printed and retained by the vessel owner and operator before any information stored in the scale computer memory is replaced. The fault log must detail either the prior 1,000 faults and startups, or all faults and startups since the scale electronics were first put into service, whichever is less. A fault, for the purposes of the fault log, is any condition other than underflow detected by the scale electronics that could affect the metrological accuracy of the scale. The printout from the fault log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, year, and time of each startup to the nearest minute in A.l.t.;

(C) The month, day, year, and time that each fault began to the nearest minute in A.l.t.;

(D) The month, day, year, and time that each fault was resolved to the nearest minute in A.l.t.

(v) *Calibration and log requirements for 2015 only.* The owner and operator of a vessel with a scale used by the vessel crew to weigh catch that was approved after March 1, 2014, and before December 31, 2014, under § 679.28(b)(2) are not required to comply with the calibration log requirements at § 679.28(b)(5)(iii) or the fault log requirements at § 679.28(b)(5)(iv) until that scale is reapproved by a NMFS-authorized scale inspector in 2015.

(6) *Scale installation requirements.* The scale display must be readable from the location where the observer collects unsorted catch, unless otherwise authorized by a NMFS-authorized scale inspector.

* * * * *

(8) *Video monitoring for scales used by the vessel crew to weigh catch.* The owner and operator of a vessel fishing for groundfish and required to weigh catch under the regulations in this section must provide and maintain a NMFS-approved video monitoring system as specified in paragraph (e) of this section. Additionally, the system must:

(i) Provide sufficient resolution and field of view to monitor: all areas where catch enters the scale, moves across the scale and leaves the scale; any access point to the scale that may be adjusted or modified by vessel crew while the vessel is at sea; and the scale display and the indicator for the scale operating in a fault state.

(ii) Record and retain video for all periods when catch that must be weighed is on board the vessel.

* * * * *

(d) * * *

(1) *Accessibility.* All the equipment required for an observer sampling station must be available to the observer at all times while a sampling station is required and the observer is aboard the vessel, except that the observer sampling scale may be used by vessel personnel to conduct material tests of the scale used to weigh catch under paragraph (b)(3) of this section, as long as the use of the observer's sampling scale by others does not interfere with the observer's sampling duties.

* * * * *

(9) * * *

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The vessel owner must submit an Inspection Request for Observer Sampling Station with all the information fields accurately filled in to NMFS by fax (206–526–4066) or emailing (*station.inspections@noaa.gov*) at least 10 working days in advance of the requested date of inspection. The request form is available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

* * * * *

(e) *Video Monitoring System Requirements*–(1) *What requirements must a vessel owner or operator comply with for a video monitoring system*? (i) The system must have sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.).

(ii) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iii) The system must output video files to an open source format or the vessel owner must provide software capable of converting the output video file to an open source format or commercial software must be available for converting the output video file to an open source format.

(iv) Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(v) The vessel operator must maintain the video data and make it available on request by NMFS employees, or any individual authorized by NMFS. The data must be retained on board the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(vi) The system must record at a speed of no less than 5 unique frames per second at all times when the use of a video monitoring system is required.

(vii) NMFS employees, or any individual authorized by NMFS, must be able to view any video footage from any point in the trip using a 16-bit or better color monitor that can display all cameras simultaneously and must be assisted by crew knowledgeable in the operation of the system.

(viii) Unless exempted under paragraph (D) below, a 16-bit or better color monitor must be provided within the observer sampling station or at the location where the observer sorts and weighs samples. The monitor:

(A) Must have the capacity to display all cameras simultaneously;

(B) Must be operating when the use of a video monitoring system is required;

(C) Must be securely mounted at or near eye level;

(D) Is not applicable to longline C/Ps subject to § 679.100(b)(2).

(2) *How does a vessel owner or operator arrange for NMFS to conduct a video monitoring system inspection?* The vessel owner or operator must submit an Inspection Request for a Video Monitoring System to NMFS with all information fields accurately filled in at least 10 working days in advance of the requested date of inspection. The request form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*).

(3) *What additional information is required for a video monitoring system inspection?* (i) A diagram drawn to scale showing all sorting locations, the location of the motion-compensated scale, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the Inspection Request for a Video Monitoring System form. Diagrams for C/Ps and motherships in the BSAI pollock fishery, including pollock CDQ, must include the location of the salmon storage container.

(ii) Any additional information requested by the Regional Administrator.

(4) *Where will NMFS conduct video monitoring and bin monitoring system inspections?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(5) A video monitoring system is approved for use when NMFS employees, or any individual authorized

by NMFS, completes and signs a Video Monitoring Inspection Report verifying that the video system meets all applicable requirements of this section.

(6) A vessel owner or operator must maintain a current NMFS-issued Video Monitoring System Inspection Report on board the vessel at all times the vessel is required to provide an approved video monitoring system. The video monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(7) *How does a vessel owner make a change to the video monitoring system?* Any change to the video monitoring system that would affect the system's functionality must be submitted by a vessel owner to, and approved by, the Regional Administrator in writing before that change is made.

* * * * *

(i) * * *

(1) * * *

(ii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. The observer must be able to view the activities of crew in the bin from these locations.

(iii) *Option 3—Video Monitoring system option.* A vessel owner and operator must provide and maintain a NMFS-approved video monitoring system as specified in paragraph (e) of this section. Additionally, the vessel owner and operator must ensure that:

(A) All periods when fish are inside the bin are recorded and stored;

(B) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located.

* * * * *

(3) *How does a vessel owner arrange for a bin monitoring option inspection?* The owner must submit an Inspection Request for Bin Monitoring to NMFS with all the information fields filled in at least 10 working days in advance of the requested date of inspection. The request form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*).

* * * * *

(j*) Video monitoring on catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* The owner and operator of a C/P or a mothership must provide and maintain a video monitoring system approved under paragraph (e) of this section. These video monitoring system requirements must be met when the C/P is directed fishing for pollock in the BS, including pollock CDQ, and when the mothership is taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ. Additionally, the system must—

(1) Record and retain video for all periods when fish are flowing past the sorting area or salmon are in the storage container.

(2) The system must provide sufficient resolution and field of view to observe all areas where salmon are sorted from the catch, all crew actions in these areas, and discern individual fish in the salmon storage container.

(k) *Video monitoring in the longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b)(2) must provide and maintain a video monitoring system approved under paragraph (e) of this section. These video monitoring system requirements must be met when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. Additionally, the system must:

(1) Record and retain video for all periods when Pacific cod are being sorted and weighed.

(2) Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.

■ 4. In § 679.100,

■ a. Remove paragraph (d); and

■ b. Revise paragraph (b) introductory text and paragraph (b)(2)(i)(D) to read as follows:

§ 679.100 Applicability.

* * * * *

(b) *Monitoring option selection.* The owner of a vessel subject to this subpart that does not opt out under paragraph (a) of this section must submit a completed notification form for one of two monitoring options to NMFS. The notification form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). The vessel owner must comply with the selected monitoring option at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. If NMFS does not receive a notification to opt out or a notification for one of the two monitoring options, NMFS will assign that vessel to the increased observer coverage option under paragraph (b)(1) of this section until the notification form has been received by NMFS.

* * * * *

(2) * * *

(i) * * *

(D) The vessel is in compliance with the video monitoring requirements described at § 679.28(k).

* * * * *

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BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 147

Thursday, July 31, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 28, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within September 2, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: General Administrative Regulations; Subpart V-Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies.

OMB Control Number: 0563–0064.

Summary of Collections: The Federal Crop Insurance Corporation (FCIC) amends the procedures for the submission of policies, plans of insurance, or other rates or premium by insurance companies, entities or other persons. Public Law 96–365 provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act, as amended, expanded the role of the crop insurance to be the principal tool for risk management by producers of farm products and required that the crop insurance program operate on an actuarially sound basis. It provides for independent reviews of insurance products by persons experienced as actuaries and in underwriting. The Act was further amended in 2008 to provide the opportunity for the submission of a concept proposal to the FCIC Board of Directors (Board) for approval for advance payment of estimated research and development expenses.

Need and Use of the Information: An applicant has the option to submit a concept proposal or a submission package for a crop insurance product and have it presented to the Board. The Board will review an applicant's submissions to determine, if the interests of agricultural producers and taxpayers are protected; the submission is actuarially appropriate; appropriate insurance principles are followed; the requirements of the Act are met; and that sound, reasonable and appropriate underwriting principals are followed. If the information is incomplete, the submission will be disapproved.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 288.

Frequency of Responses: Recordkeeping: Reporting; Other.

Total Burden Hours: 113,921.

Risk Management Agency

Title: Standard Reinsurance Agreement.

OMB Control Number: 0563–0069.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Sec. 1508(k), authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to approved insurance providers that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Standard Reinsurance Agreement (SRA) is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The SRA includes Regulatory Duties and Responsibilities, Plan of Operations, Policy Acceptance and Storage System and Quality Assurance and Program Integrity.

Need and Use of the Information: The Plan of Operations provides the information the insurer is required to file for the initial and each subsequent reinsurance year. FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information were not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 20,019.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 173,200.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2014–18058 Filed 7–30–14; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Solicitation of Input From Stakeholders Regarding the U.S. Sheep Experiment Station in Dubois, Idaho

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of virtual listening sessions and request for stakeholder input.

SUMMARY: The United States Department of Agriculture announces two (2) virtual listening sessions on the research activities conducted at the U.S. Sheep

Experiment Station (USSES) in Dubois, Idaho.

DATES: Agricultural Research Service will hold two (2) virtual listening sessions on Wednesday, August 6, 2014 at 2:00 p.m. Eastern Time, and Thursday, August 7, 2014 at 11:00 a.m. Eastern Time, to collect stakeholder input. All comments not otherwise presented or submitted for the record at the virtual listening sessions must be submitted by close of business Thursday, August 14, 2014, to the mailing address or email below.

ADDRESSES: The listening sessions will take place virtually at the AT&T Meeting Rooms below. Please follow the pre-registration instructions to ensure your participation in the listening session of your choice.

Call-In instructions for Wednesday, August 6, 2014 at 2:00 p.m. Eastern Time:

Web Preregistration: Participants may preregister for this teleconference at *http://emsp.intellor.com?p=416251&do=register&t=8.* Once the participant registers, a confirmation page will display dial-in numbers and a unique PIN, and the participant will also receive an email confirmation of this information.

Call-In instructions for Thursday, August 7, 2014 at 11:00 a.m. Eastern Time:

Web Preregistration: Participants may preregister for this teleconference at *http://emsp.intellor.com?p=416252&do=register&t=8.* Once the participant registers, a confirmation page will display dial-in numbers and a unique PIN, and the participant will also receive an email confirmation of this information.

You may submit comments to at: Agricultural Research Service, Jamie L. Whitten Building, Room 302A, 1400 Independence Avenue SW., Washington, DC 20250, or via email at *USSES@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Arnold, Budget Director, or Ms. Colette Wood, Program Analyst, Agricultural Research Service; telephone (202) 720–4421; fax: (202) 720–5427; or email: *michael.arnold@ars.usda.gov* or *colette.wood@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: On Wednesday, August 6, 2014 at 2:00 p.m. Eastern Time and Thursday, August 7, 2014 at 11:00 a.m. Eastern Time, virtual listening sessions will be conducted for any interested Agricultural Research Service stakeholders and/or any interested parties, to hear your support, concerns, or opinions on the research activities at the USSES. ARS plans to consider stakeholder input received from this meeting as well as other written comments and stakeholder input in developing an appropriate course of action for USSES in Dubois, Idaho.

These virtual listening sessions are open to the public and any interested individuals wishing to attend.

Opportunity for public comment will be offered each day of the virtual listening session. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to one week following the virtual listening sessions (by close of business Thursday, August 14, 2014). All statements will become a part of the official record of the Agricultural Research Service and will be kept on file for public review in the Office of the Administrator.

Done at Washington, DC, this 22nd day of July 2014.

Chavonda Jacobs-Young,

Administrator, Agricultural Research Service.

[FR Doc. 2014–18027 Filed 7–30–14; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 214, 219, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions provide information on the procedures to comment, object or appeal, and establish the date that the Forest Service will use to determine if comments or appeals/objection were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after July 2014. The list of newspapers will remain in effect until June 2015, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kris Rutledge, Regional Appeals/Objection Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401 and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 214, 219, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 214, 219 and 218. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals/objection. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal/objection period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

Regional Forester decisions affecting National Forests in Idaho:
Idaho Statesman
Regional Forester decisions affecting National Forests in Nevada:
Reno Gazette-Journal
Regional Forester decisions affecting National Forests in Wyoming:
Casper Star-Tribune
Regional Forester decisions affecting National Forests in Utah:
Salt Lake Tribune
Regional Forester decisions that affect all National Forests in the Intermountain Region:
Salt Lake Tribune

Ashley National Forest

Ashley Forest Supervisor decisions:
Vernal Express
District Ranger decisions for Duchesne, Roosevelt:
Uintah Basin Standard
Flaming Gorge District Ranger for decisions affecting Wyoming:
Rocket Miner
Flaming Gorge and Vernal District Ranger for decisions affecting Utah:
Vernal Express

Boise National Forest

Boise Forest Supervisor decisions:
Idaho Statesman
Cascade District Ranger decisions:
The Star-News
Emmett District Ranger decisions:
Messenger-Index
District Ranger decisions for Idaho City and Mountain Home:
Idaho Statesman
Lowman District Ranger decisions:
Idaho World

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor and District Ranger decisions:

Casper Star-Tribune

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal
Caribou-Targhee Forest Supervisor decisions for the Targhee portion:
Post Register
District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin:
Post Register
District Ranger decisions for Montpelier, Soda Springs and Westside:
Idaho State Journal

Dixie National Forest

Dixie Forest Supervisor decisions:
The Spectrum
District Ranger decisions for Cedar City, Escalante, Pine Valley and Powell:
The Spectrum
Fremont (formerly Teasdale) District Ranger decisions:
Richfield Reaper

Fishlake National Forest

Fishlake Forest Supervisor and District Ranger decisions:
Richfield Reaper

Humboldt-Toiyabe National Forest

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests:
Reno Gazette-Journal
Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Daily Free Press
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal
Austin District Ranger decisions:
The Battle Mountain Bugle
Bridgeport and Carson District Ranger decisions:
Reno Gazette-Journal
Ely District Ranger decisions:
The Ely Times
District Ranger decisions for Jarbidge, Mountain City and Ruby Mountains:
Elko Daily Free Press
Santa Rosa District Ranger decisions:
Humboldt Sun
Spring Mountains National Recreation Area District Ranger decisions:
Las Vegas Review Journal
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News

Manti-La Sal National Forest

Manti-La Sal Forest Supervisor decisions:
Sun Advocate
Ferron District Ranger decisions:
Emery County Progress
Moab District Ranger decisions:
Times Independent
Monticello District Ranger decisions:
San Juan Record
Price District Ranger decisions:
Sun Advocate
Sanpete District Ranger decisions:
Sanpete Messenger

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman
Council District Ranger decisions:
Adams County Record
District Ranger decisions for Krassel, McCall and New Meadows:
Star News
Weiser District Ranger decisions:
Signal American

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger
District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork:
The Challis Messenger
District Ranger decisions for Leadore, North Fork and Salmon-Cobalt:
The Recorder-Herald

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News
District Ranger decisions for Fairfield and Minidoka:
The Times News
Ketchum District Ranger decisions:
Idaho Mountain Express
Sawtooth National Recreation Area:
The Challis Messenger

Uinta-Wasatch-Cache National Forest

Forest Supervisor decisions for the Uinta portion, including the Vernon Unit:
Provo Daily Herald
Forest Supervisor decisions for the Wasatch-Cache portion:
Salt Lake Tribune
Forest Supervisor decisions for the entire Uinta-Wasatch-Cache:
Salt Lake Tribune
District Ranger decisions for the Heber-Kamas, Pleasant Grove and Spanish Fork Ranger Districts:
Provo Daily Herald
District Ranger decisions for Evanston and Mountain View:
Uinta County Herald
District Ranger decisions for Salt Lake:
Salt Lake Tribune
District Ranger decisions for Logan:
Logan Herald Journal
District Ranger decisions for Ogden:
Standard Examiner

Dated: July 8, 2014.

Nan Christianson,

Deputy Regional Forester.

[FR Doc. 2014–17995 Filed 7–30–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2014–0010]

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The 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 on Wednesday, August 20, 2014, from 8:00 a.m. to 5:00 p.m. CDT, and Thursday, August 21, 2014, from 8:00 a.m. to 12:00 noon. A public comment period will be held on August 21.

Individuals wishing to make oral presentations should contact Greg Johnson at (503) 273–2424 or email: *greg.johnson@por.usda.gov* no later than August 6, 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 Greg Johnson, Designated Federal Official, USDA, NRCS, 1201 Lloyd Boulevard, Suite 1000, Portland Oregon 97232 no later than August 6, 2014.

ADDRESSES: The meeting will be held at the Texas A&M University Memorial Student Center, College Station, Texas (*http://www.mscc.tamu.edu/aboutus/parking.html*).

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 any 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

August 20–21, 2014

College Station, Texas

A. Welcome remarks and introductions
B. Overview of agriculture and air quality in Texas
C. Environmental Protection Agency regulatory review for agriculture
D. Wildfire risk assessment and prescribed burning
E. Review of climate change regulatory status and agriculture
F. AAQTF subcommittee deliberations and recommendations
G. Updates from USDA agencies (FS, NRCS, NIFA, and ARS)
H. Selected agricultural air quality research presentations
I. Public input. 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. Those persons wishing to make oral presentations should notify Greg Johnson at (503) 273–2424 no later than August 6, 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 August 6, 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 of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD).

Signed this 24th day of July 2014, in Washington, DC.

Jason A. Weller,

Chief, Natural Resources Conservation Service.

[FR Doc. 2014–17992 Filed 7–30–14; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Development Voucher Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) in Fiscal Year 2006 established the demonstration Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949 as amended (42 U.S.C. 1490R) (without regard to Section 542(b)). This Notice informs the public that funding is available for the Rural Development Voucher Program and also sets forth the general policies and procedures for use of these vouchers for Fiscal Year 2014. Pursuant to the requirements in the Consolidated Appropriations Act, 2014, Public Law 113–76, Rural Development Vouchers are only available to low-income tenants of Rural Development-financed multifamily properties where Rural Rental Housing loan (Section 515 loan) has been prepaid (either through prepayment or foreclosure action), prior to the loan's maturity date and after September 30, 2005.

DATES: In order to participate, the voucher obligation form must be submitted within 10 months of the foreclosure or pre-payment.

FOR FURTHER INFORMATION CONTACT: Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 0782, Washington, DC 20250–0782, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TDD by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Appropriations Act, 2014, Public Law 113–76, provided that the Secretary of the USDA shall carry out the Rural Development Voucher program as follows:

That of the funds made available under this heading, $12,575,000 shall be available for rural housing vouchers to any low-income household (including those not receiving Rental Assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005: *Provided further,* that the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: *Provided further,* that funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further,* that the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to Section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD).

This Notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or USDA action results in a foreclosure after September 30, 2005.

II. Design Features of the Rural Development Voucher Program

This section sets forth the design features of the Rural Development Voucher Program, including the eligibility of families, the inspection of the housing units, and the calculation of the subsidy amount.

Rural Development Vouchers under this part are administered by the Rural Housing Service, an Agency under the Rural Development mission area, in accordance with requirements set forth in this Notice and further explained in, ''The Rural Development Voucher Program Guide,'' which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at *https://offices.sc.egov.usda.gov/locator/app.* These requirements are generally based on the housing choice voucher program regulations of HUD set forth at 24 CFR part 982, unless otherwise noted by this Notice.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's Section 515 Rural Rental Housing Program (515 property) who

may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. Regardless, the tenant may be responsible for the full payment of rent when a prepayment occurs, whether or not the rent increases. The Rural Development Voucher Program applies to any Section 515 property where the mortgage is paid off prior to the maturity date in the promissory note, and that payment occurs after September 30, 2005, this includes properties foreclosed on by Rural Development. Tenants in properties foreclosed on by Rural Development are eligible for a Rural Development Voucher under the same conditions as properties that go through the standard prepayment process.

The Rural Development Voucher is intended to help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or to take to any other rental unit in the United States and its territories.

There are some general limitations on the use of a voucher:

- The rental unit must pass a Rural Development health and safety inspection, and the owner must be willing to accept a Rural Development Voucher.
- Also, Rural Development Vouchers cannot be used for units in subsidized housing like Section 8 and public housing where two housing subsidies would result. The Rural Development Voucher may be used for rental units in other properties financed by Rural Development, but it will not be used in combination with the Rural Development Rental Assistance program.
- The Rural Development Voucher may not be used to purchase a home.

a. *Family Eligibility.* In order to be eligible for the Rural Development Voucher under this Notice, a family must:

1. Be residing in the Section 515 project on the date of the prepayment of the Section 515 loan or upon foreclosure by Rural Development;

2. The date of the prepayment or foreclosure must be after September 30, 2005;

3. Based on Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) and similar to Section 8 housing vouchers, financial assistance under this voucher program can only be provided to a United States (U.S.) citizen, U.S. non-citizen national, or a resident alien that meets certain qualifications. Rural Development considers the tenant who applies for the voucher under this Notice as the individual receiving the financial assistance from the voucher. Accordingly, the individual tenant who applies for a voucher under this program must submit the following documentation (42 U.S.C. 1436a (d)):

i. For citizens, a written declaration of U.S. citizenship under the penalty of perjury. Rural Development may request verification of the declaration by requiring presentation of a U.S. passport, Social Security card, or other appropriate documentation;

ii. For non-citizens who are 62 years of age or older, the evidence consists of:

A. A signed declaration of eligible immigration status; and

B. Proof of age document; and

iii. For all other noncitizens, the evidence consists of:

A. A signed declaration of eligible immigration status;

B. Alien registration documentation or other proof of immigration registration from the United States Citizenship and Immigration Services (USCIS) that contains the individual's alien admission number or alien file number; and

C. A signed verification consent form, which provides that evidence of eligible immigration status may be released to Rural Development and USCIS for purposes of verifying the immigration status of the individual. Rural Development shall provide a reasonable opportunity, not to exceed 30 days, for an individual to submit evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service; and

D. The family must be a low-income family on the date of the prepayment or foreclosure. A low-income family is a family whose annual income does not exceed 80 percent of the family median income for the area as defined by HUD. HUD's definition of median income can be found at: *http://www.huduser.org/portal/datasets/il/il14/index_mfi.html.*

During the prepayment or foreclosure process, Rural Development will evaluate every tenant family to determine if it is low-income. If Rural Development determines a family is low-income, then immediately following the foreclosure or prepayment, Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Request Form and a citizenship declaration form. If the family wants to participate in the Rural Development Voucher Program, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the citizenship declaration to the local Rural Development office. If Rural Development determines that the tenant is ineligible, Rural Development will provide administrative appeal rights pursuant to 7 CFR part 11.

b. *Obtaining a Voucher.* Rural Development will monitor the prepayment request process or foreclosure process, as applicable. As part of prepayment or foreclosure, Rural Development will obtain a rent comparability study for the property days prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified if they are eligible and the amount of the voucher within 90 days following the date of prepayment or foreclosure. The tenant notice will include a description of the Rural Development Voucher Program, a Voucher Obligation Request Form, and letter from Rural Development offering the tenant participation in the Rural Development Voucher Program. The tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the signed citizenship declaration. Failure to submit the Voucher Obligation Request Form and the signed citizenship declaration within the required timeframes eliminates the tenant's opportunity to receive a voucher. A tenant's failure to respond within the required timeframes is not appealable. Once the primary tenant returns the Voucher Obligation Request Form and the citizenship declaration to Rural Development, a voucher will be issued within 30 days. All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development

to the tenant at the time the Voucher Obligation Form and citizenship declaration is received. In cases when the foreclosure sale yields no successful bidders and the property enters Rural Development inventory, vouchers will only be offered upon taking the property into inventory. The voucher cannot be used at an inventory property. The tenant in an inventory property has 10 months from the date of the foreclosure to return the Voucher Obligation Request Form and the signed citizenship declaration. Failure to submit the Voucher Obligation Request Form and the signed citizenship declaration within the required timeframes eliminates the tenant's opportunity to receive a voucher. A tenant's failure to respond within the required timeframes is not appealable.

The family receiving a Rural Development Voucher has an initial period of 60 calendar days from issuance of the voucher to find a housing unit. At its discretion, Rural Development may grant one or more extensions of the initial period for up to an additional 60 days. Generally the maximum voucher period for any family participating in the Rural Development Voucher Program is 120 days. Only if the family needs and requests an extension of the initial period as a reasonable accommodation to make the program accessible to a disabled family member, Rural Development will extend the voucher search period beyond the 120 days. If the Rural Development Voucher remains unused after a period of 150 days from original issuance, the Rural Development Voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development Voucher.

If a tenant previously participated in the Rural Development Voucher Program and was subsequently terminated, that tenant is ineligible for future participation in the Rural Development Voucher Program.

c. *Initial Lease Term.* The initial lease term for the housing unit where the family wishes to use the Rural Development Voucher must be for one year.

d. *Inspection of Units and Unit Approval.* Once the family finds a housing unit, Rural Development will inspect and determine if the housing standard is acceptable within 30 days of Rural Development's receipt of the HUD Form 52517 ''Request for Tenancy Approval Housing Choice Voucher Program'' found at *http://www.hud.gov/offices/adm/hudclips/forms/files/52517.pdf* and the Disclosure of Information on Lead-Based Paint Hazards. The inspection standards currently in effect for the Rural Development Section 515 Multi-Family Housing Program apply to the Rural Development Voucher Program. Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards set forth at 7 CFR 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met:

1. The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and

2. The lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided by Rural Development when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before Rural Development Voucher payments can be made. Rural Development will use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period will be considered untimely, and Rural Development will not pay any housing assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a HAP contract that is effective prior to the Section 515 loan prepayment.

e. *Subsidy Calculations for Rural Development Vouchers.* As stated earlier, if eligible, the tenant will be notified of the maximum voucher amount within 90 days following prepayment or foreclosure. The maximum voucher amount for the Rural Development Voucher Program is the difference between the comparable market rent for the family's former Section 515 unit and the tenant's rent contribution on the date of the prepayment. The voucher amount will be based on the comparable market rent; the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the tenant chooses to stay in-place. Also, in no event may the Rural Development Voucher payment exceed the actual tenant lease rent. The amount of the voucher does not change either over time or if the tenant chooses to move to a more expensive location.

f. *Mobility and Portability of Rural Development Vouchers.* An eligible family that is issued a Rural Development Voucher may elect to use the assistance in the same project or may choose to move to another location. The Rural Development Voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, and where the owner will accept a Rural Development Voucher and execute a Form HUD 52641. Tenants and landlords must inform Rural Development if the tenant plans to move during the HAP agreement term, even to a new unit in the same complex. All moves (within a complex or to another complex) require a new obligation, a new inspection and a new HAP agreement. In addition, HUD Section 8 and Federally assisted public housing is excluded from the Rural Development Voucher Program because these units are already Federally subsidized tenants with a Rural Development Voucher would have to give up the Rural Development Voucher to accept the assistance at those properties. The Rural Development Voucher may be used in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance program. Tenants with a Rural Development Voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or Rental Assistance. If the tenant relinquishes the Rural Development Voucher in favor of Rental

Assistance, the tenant is not eligible to receive another Rural Development Voucher.

g. *Term of Funding and Conditions for Renewal for Rural Development Vouchers.* The Rural Development Voucher Program provides voucher assistance for 12 monthly payments. The voucher is issued to the household in the name of the primary tenant, as the voucher holder. The voucher is not transferable from the voucher holder to any other household member except in the case of the voucher holder's death or involuntary household separation, such as the incarceration of the voucher holder or transfer of the voucher holder to an assisted living or nursing home facility. Upon receiving documentation of such cases, the voucher may be transferred at the Agency's discretion to another tenant on the voucher holder's lease.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher, a tenant must return a signed Voucher Obligation Form which will be sent to the tenant within 60–90 days before the current voucher expires. If the voucher holder fails to return the renewal Voucher Obligation Form before the current voucher funding expires, the voucher will be terminated.

In order to ensure continued eligibility to use the Rural Development Voucher, at the time they apply for renewal of the voucher, tenants must certify that the current family income does not exceed 80 percent of family median income. Rural Development will advise the tenant of the maximum income level when the renewal Voucher Obligation Form is sent.

Renewal requests will enjoy no preference and will be processed as described in this Notice.

III. Non-Discrimination Statement

The U.S. Department of Agriculture (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 of 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, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request 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 wish to file a program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish.) USDA is an equal opportunity provider and employer. The full ''Non-Discrimination Statement'' is found at: *http://www.usda.gov.wps/portal/usda/usdahome?navtype=Non_Discrimination.*

IV. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: July 8, 2014.

Tony Hernandez,

Administrator, Housing and Community Facilities Programs.

[FR Doc. 2014–17979 Filed 7–30–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–53–2014]

Approval of Subzone Status, ASML US, Inc., Wilton and Newtown, Connecticut

On May 13, 2014, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Bridgeport Port Authority, grantee of FTZ 76, requesting subzone status subject to the existing activation limit of FTZ 76 on behalf of ASML US, Inc. in Wilton and Newtown, Connecticut.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (79 FR 29166–29167, 05–21–2014). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 76A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 76's 476-acre activation limit.

Dated: July 24, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–18073 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1943]

Reorganization of Foreign-Trade Zone 60; Under Alternative Site Framework; Nogales, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Nogales-Santa Cruz Economic Development Foundation, Inc., grantee of Foreign-Trade Zone 60, submitted an application to the Board (FTZ Docket B–24–2014, docketed 03/12/2014) for authority to reorganize under the ASF with a service area of Santa Cruz County, Arizona, in and adjacent to the Nogales-Mariposa U.S. Customs and Border Protection port of entry, and FTZ 60's existing Sites 1 and 2 would be categorized as magnet sites and existing Site 3 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (79 FR 15098–15099, 03/18/2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 60 under the ASF is approved, subject to

the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 and 2 if not activated by July 31, 2019, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 3 if no foreign-status merchandise is admitted for a bona fide customs purpose by July 31, 2017.

Signed at Washington, DC, this 17th day of July 2014.

Paul Piquado

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2014–18066 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1944]

Reorganization and Expansion of Foreign-Trade Zone 57; Under Alternative Site Framework; Charlotte, North Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Charlotte Regional Partnership, Inc., grantee of Foreign-Trade Zone 57, submitted an application to the Board (FTZ Docket B–12–2014, docketed 02–07–2014) for authority to reorganize and expand under the ASF with a service area consisting of the Counties of Alexander, Anson, Caldwell, Cabarrus, Catawba, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Polk, Rowan, Rutherford, Stanly, and Union, within and adjacent to the Charlotte Customs and Border Protection port of entry, to combine Sites 1 and 1a as Site 1 and expand the site to include 2.769 additional acres, to remove Sites 2 and 3, to modify Site 7 by removing Parcel 1, and to add a new site (Site 17). FTZ 57's modified Sites 1 and 7 would become usage-driven sites and existing Site 16 and new Site 17 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (79 FR 8434–8435, 02–12–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 57 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 16 if not activated by July 31, 2019, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 1 and 7 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2017.

Signed at Washington, DC, this 17th day of July 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2014–18065 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review. Rebuttal comments will be due five days after submission of initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2015.

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
Chlorinated Isocyanurates A–570–898	6/1/13–5/31/14
Hebei Jiheng Chemical Co., Ltd.	
Heze Huayi Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
High Pressure Steel Cylinders A–570–977	6/1/13–5/31/14
Beijing Tianhai Industry Co., Ltd.	
Polyester Staple Fiber A–570–905	6/1/13–5/31/14
Takayasu Industrial (Jiangyin) Co., Ltd.	
Zhaoqing Tifo New Fibre Co., Ltd.	
Tapered Roller Bearings A–570–601	6/1/13–5/31/14
Changshan Peer Bearing Co., Ltd.	
GGB Bearing Technology (Suzhou) Co., Ltd.	
Guangzhou Longgo Auto Parts Inc.	
Ningbo Xinglum Bearings Import & Export Co., Ltd.	
Xinchang Kaiyuan Automotive Bearing Co., Ltd.	
Yantai CMC Bearing Co. Ltd.	
Zhaoqing Native Produce Import and Export Co, Ltd. of Guangdong.	
Countervailing Duty Proceedings	
High Pressure Steel Cylinders C–570–978	1/1/13–12/31/13
Beijing Tianhai Industry Co., Ltd.	

Suspension Agreements

None

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[4] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at

[4] *See* section 782(b) of the Act.

the end of the *Interim Final Rule.*[5] All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[6] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–18076 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

[6] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–820]

Ferrosilicon From the Russian Federation: Final Determination of Sales at Not Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') determines that ferrosilicon from the Russian Federation (''Russia'') is not being, nor is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The final weighted-average dumping margin is listed below in the section entitled ''Final Determination.''

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2014, the Department published in the **Federal Register** the preliminary determination of sales at not LTFV in the antidumping duty investigation of ferrosilicon from Russia.[1] The following events have occurred since we issued the *Preliminary Determination.* We issued a supplemental questionnaire to RFA International LP (''RFAI'') and received a response on March 14, 2014. On March 24, 2014, CC Metals and Alloys, LLC and Globe Specialty Metals, Inc.[2] (together, ''Petitioners'') filed pre-verification comments. The Department conducted the home market cost and sales verifications from March 24, through April 8, 2014, and the U.S. sales verification from April 14, through April 17, 2014. The Department issued the cost verification report on April 23, 2014. On April 25, 2014, Petitioners filed comments regarding the home market sales verification. Petitioners also requested a meeting to discuss those verification comments which we held on May 30, 2014. The Department released the home market sales verification report on May 23, 2014, and the constructed export price (''CEP'') verification report on May 27, 2014. On the same date, the Department (1) requested that RFAI submit revised U.S. sales data based on the CEP verification corrections, and (2) notified interested parties of the case and rebuttal brief schedule. On June 10, 2014, Petitioners and RFAI filed case briefs. On June 20, 2014, Petitioners and RFAI filed rebuttal briefs.[3] On July 7, 2014, the Department held closed and public hearings, based on Petitioners' timely filed requests.

Period of Investigation

The period of investigation (''POI'') is July 1, 2012, through June 30, 2013.

Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more

[1] *See Ferrosilicon From the Russian Federation: Preliminary Determination of Sales at Not Less Than Fair Value,* 79 FR 13620 (March 11, 2014).

[2] The original Petitions were filed on behalf of Globe Specialty Metals, Inc. (''GSM''), CC Metals and Alloys, LLC (''CCMA''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. However, only GSM and CCMA filed comments and arguments on behalf of these parties since before the *Preliminary Determination.*

[3] On July 3, 2014, Petitioners filed rebuttal briefs excluding information which we directed Petitioners to redact from their rebuttal brief dated June 20, 2014. *See* Letter to Petitioners dated July 2, 2014, requesting filing of rebuttal brief excluding redacted information.

than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum,[4] which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in March and April 2014, we verified RFAI's cost and sales information for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records and RFAI's original source documents.[5]

Final Determination

The weighted-average dumping margin is as follows:

Producer or exporter	Weighted-average margin (percent)
RFA International LP [6]	0.00

Consistent with section 735(c)(1)(B) of the Act, the Department has not calculated a weighted-average dumping margin for all other producers or exporters because it has not made an affirmative final determination of sales at LTFV.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

Because the weighted-average dumping margin for the examined company is *de minimis,* we are not directing U.S. Customs and Border Protection to suspend liquidation of entries of ferrosilicon from Russia.

U.S. International Trade Commission (''ITC'') Notification

In accordance with section 735(d) of the Act, we notified the ITC of our final determination. As our final determination is negative, this proceeding is terminated.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: July 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—Issues in Decision Memorandum

I. Summary
II. Background
III. Scope of Investigation
IV. Margin Calculations
V. Discussion of Issues

General

1. Whether To Apply Adverse Facts Available for the Final Determination
2. Whether RFAI Failed to Fully Disclose Its Home Market Sales Process
3. Whether the Record Contains the Proper Universe of Home Market Sales
   A. Material Terms of Sale/Date of Sale
   B. Post-Invoice Changes to Physical Quantity and CONNUM

Home Market Issues

4. Whether To Use ''As Invoiced'' or ''As Delivered'' Home Market Sales Data
5. Calculation of Imputed Credit Expenses for Partially Delivered Sales
6. Treatment of Revenues and Expenses for Certain Sales Activities/Expenses
7. Calculation of Short-Term Credit for Home Market Imputed Costs
8. Calculation of Domestic Inventory Carrying Costs
9. Calculation of Domestic Warehousing Expenses
10. Correct the Unit of Measure Conversion Applied to Home Market Inventory Carrying Costs

U.S. Sales Issues

11. Calculation of Per Unit Cost of Goods Sold for U.S. Inventory Carrying Costs
12. Calculation of U.S. Sampling Expenses
13. Calculation of Short Term Credit for U.S. Sales
14. Calculation of U.S. Indirect Selling Expenses
15 Calculation of Certain U.S. Movement Expenses
16. Whether To Use of Average-to-Transaction Price Comparisons

[FR Doc. 2014–18059 Filed 7–30–14; 8:45 am]

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[4] *See* Memorandum from Christian Marsh to Paul Piquado, ''Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,'' dated concurrently with this notice (''Issues and Decision Memorandum'').

[5] *See* Memorandum to the File, ''Verification of the Cost Response of RFA International, LP in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,'' dated April 23, 2014; Memorandum to the File, ''Verification of Home Market Sales of Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company (''CHEMK'') and RFA International, LP (''RFAI''),'' dated May 22, 2014; Memorandum to the File, ''Verification of Russia Ferro-Alloys Inc. in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,'' dated May 23, 2014.

[6] In the *Preliminary Determination,* we found that RFAI, CHEMK, and JSC Kuznetskie Ferrosplavy comprise a single entity. *See Preliminary Determination,* 79 FR at 13621 & n.7. The Department has not received any information that places that determination into doubt. Therefore, we continue to find that these three companies comprise a single entity for purposes of the antidumping duty law.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain crystalline silicon photovoltaic products (''certain solar products'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation is October 1, 2012 through September 30, 2013. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Charles Riggle, or James Martinelli, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, or (202) 482–2923, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on January 29, 2014.[1] Pursuant to section 773(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 43 days.[2]

Scope of the Investigation

The merchandise covered by these investigations is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these investigations, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of these investigations are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of these investigations are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

Also excluded from the scope of these investigations are crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these investigations is dispositive.

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Constructed export price (''CEP'') and export price (''EP'') have been calculated in accordance with section 772 of the Act. Normal value (''NV'') has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, de minimis or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

We based our calculation of the ''All Others'' rate on the weighted-average of the margins calculated for Gintech

[1] *See Certain Crystalline Silicone Photovoltaic Products From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 79 FR 4661 (January 29, 2014).

[2] *See Certain Crystalline Silicone Photovoltaic Products From the People's Republic of China and Taiwan: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 30084 (May 27, 2014).

Energy Corporation (''Gintech'') and Motech Industries, Inc. (''Motech'') using a simple average of the calculated margins. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents. For further discussion of this calculation, see memorandum entitled ''Calculation of the All Others Rate for the Preliminary Determination of the Antidumping Duty Investigation of certain crystalline silicon photovoltaic products from Taiwan,'' dated concurrently with this notice.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist for the producers or exporters during the period October 1, 2012 through September 30, 2013 at the following rates:

Producer or exporter	Weighted-average dumping margin (percent)
Motech Industries, Inc.	44.18
Gintech Energy Corporation	27.59
All Others	35.89

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[3] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using IA ACCESS. An electronically filed request must be received successfully in its entirety by IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of certain solar products from Taiwan as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds export price, as indicated in the chart above.[5] These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to requests from the mandatory respondents, Motech and Gintech, we are postponing the final determination. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[6] Further, Motech and Gintech requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly.[7]

Certification Requirements

If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in Taiwan, the importer is required to maintain the importer certification included in the Department's cash deposit instructions. Furthermore, if an importer imports solar panels/modules that were assembled in Taiwan and it claims the panels/modules do not contain solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in Taiwan, the importer is required to maintain the certification included in the Department's cash deposit instructions. The importer and exporter are also required to maintain an exporter certification included in the Department's cash deposit instructions if the exporter of the panels/modules for which the importer is making the claim is located in Taiwan. The importer and Taiwan-exporter are also required to maintain sufficient documentation supporting their certifications. We note that while importers and Taiwan-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of an antidumping duty cash deposit on those entries equal to the exporter specific rate in effect at the time of the entry.

If a solar panel/module contains some subject solar cells, or if a solar panel/module assembled in Taiwan contains solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in Taiwan but the importer is unable, or unwilling, to identify the total value of the panel/module subject to provisional measures, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting

[3] *See* 19 CFR 351.309.

[4] *See* 19 CFR 351.310(c).

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[6] *See also* 19 CFR 351.210(b)(2) and (e); *see also* Letter from Motech to the Department, regarding ''Request for Extension of Final Determination'' (July 9, 2014); *see also* Letter from Gintech to the Department, regarding ''Gintech Request to Postpone Final Determination'' (July 10, 2014); *see also* Letter from Petitioner to the Department, regarding ''Request to Extend Antidumping Duty Final Determination in the Event of a Negative Preliminary Determination'' (July 14, 2014).

[7] *Id.*

of an antidumping duty cash deposit on the total entered value of the panel/module equal to the exporter specific rate in effect at the time of the entry.

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain solar products from Taiwan before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Preliminary Determination
5. Postponement of Final Determination and Extension of Provisional Measures
6. Scope of the Investigation
7. Scope Comments
8. Selection of Respondents
9. Discussion of Methodology
10. Fair Value Comparisons
    A. Determination of Comparison Method
    B. Results of the Differential Pricing Analysis
11. Product Comparisons
12. Exclusions of Reported Indirect Sales to China for Gintech and Motech
13. Exclusions of Further Manufactured Sales for Motech
14. Date of Sale
15. Export Price/Constructed Export Price
    A. Gintech
    B. Motech
16. Normal Value
    A. Home-Market Viability
    B. Affiliated Party Transactions and Arm's-Length Test
    C. Level of Trade
    a. Gintech
    b. Motech
    D. Cost of Production
    a. Calculation of Cost of Production
    b. Test of Comparison Market Prices
    c. Results of the Cots of Production Test
    E. Calculation of Normal Value Based on Comparison Market Prices
17. Currency Conversion
18. Verification
19. Conclusion

[FR Doc. 2014–18055 Filed 7–30–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–824]

Ferrosilicon From Venezuela: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that ferrosilicon from Venezuela is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The final weighted-average dumping margin is listed below in the section entitled "Final Determination Margins."

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2014, the Department published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty ("AD") investigation of ferrosilicon from Venezuela.[1] The following events occurred since we issued the *Preliminary Determination.*

On February 24, 2014, FerroVen submitted comments regarding the security situation in Venezuela, explaining the risks posed to FerroVen staff and Department representatives by an on-site verification in Venezuela.[2] FerroVen included in its comments news articles and the U.S. State Department's travel warnings regarding Venezuela, noting that the unrest was not limited to Caracas, but was also occurring in Puerto Ordaz, the location of FerroVen's facility.[3] On March 7, 2014, we issued a letter to the mandatory respondent in this investigation, FerroAtlantica de Venezuela ("FerroVen"), in which we accepted its proposal to conduct the verification which would normally occur in Venezuela in Medina, Ohio, the location of FerroVen's U.S. affiliate, FerroAtlantica North America.[4] Specifically, we stated that "in light of the evolving security threat to an on-site verification conducted in a country in the midst of civil unrest, the Department has decided that such a threat would not be conducive to the efficient completion of an on-site verification or the safety of all persons involved."[5]

On April 9, 2014, CC Metals and Alloys, LLC and Globe Specialty Metals, Inc. ("Petitioners") filed pre-verification comments for the U.S. sales verification that occurred from April 21, 2014, through April 23, 2014.[6] The Department conducted the home market sales verification from April 24, 2014, through April 30, 2014.[7] On May 9, 2014, Petitioners filed pre-verification comments[8] for the cost verification that occurred from May 12, 2014, through May 16, 2014, in Madrid, Spain.[9]

On April 10, 2014, Petitioners and FerroVen requested that the Department hold a hearing in this investigation.[10]

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[1] *See Ferrosilicon From Venezuela: Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination,* 79 FR 13619 (March 11, 2014) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("Preliminary Decision Memorandum").

[2] *See* Letter to the Secretary of Commerce from FerroVen "Letter Regarding Situation in Venezuela" (February 24, 2014).

[3] *Id.*

[4] *See* Letter to FerroVen from Catherine Bertrand, Program Manager, Office V, regarding security situation in Venezuela (March 7, 2014).

[5] *Id.*

[6] *See* Letter from Petitioners "Ferrosilicon From Venezuela; CC Metals and Alloys, LLC and Globe Specialty Metals, Inc. U.S. Sales Verification Comments" (April 9, 2014); Letter to FerroVen from Catherine Bertrand, Program Manager, Office V "CEP Verification Agenda" (April 7, 2014).

[7] *See* Letter to FerroVen from Catherine Bertrand, Program Manager, Office V "Verification Agenda" (April 7, 2014).

[8] *See* Letter from Petitioners "Ferrosilicon From Venezuela; CC Metals and Alloys, LLC and Globe Specialty Metals, Inc. Cost Verification Comments" (May 9, 2014).

[9] *See* Letter to FerroVen from Michael Martin, Lead Accountant, Office of Accounting "Antidumping Duty Investigation of Ferrosilicon from Venezuela" (April 25, 2014).

[10] *See* Letter from Petitioners "Ferrosilicon From Venezuela; Investigation; CC Metals and Alloys, LLC and Globe Specialty Metals, Inc. Request for Hearing" (April 10, 2014); Letter to the Secretary of Commerce from FerroVen "Ferrosilicon from Venezuela. Case No. A–307–824: Request for Hearing" (April 10, 2014).

On June 30, 2014, Petitioners and FerroVen withdrew their requests for a hearing.[11]

The Department issued the home market and U.S. sales verification reports on June 4, 2014,[12] and the cost verification report on June 17, 2014.[13] On June 26, 2014, Petitioners and FerroVen filed case briefs.[14] On July 3, 2014, Petitioners and FerroVen filed rebuttal briefs.[15]

Period of Investigation

The period of investigation (''POI'') is July 1, 2012, through June 30, 2013.

Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum[16] which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in April and May 2014, we verified the sales and cost information submitted by FerroVen for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by FerroVen.[17]

Final Determination

The weighted-average dumping margins are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
FerroAtlantica de Venezuela[18] ..	22.84
All Others	22.84

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the weighted-average dumping margins calculated for the producers or exporters individually examined, excluding rates that are zero, *de minimis* or determined entirely under section 776 of the Act. Since we calculated a weighted-average dumping margin for only one respondent that was not zero, *de minimis,* or determined entirely under section 776 of the Act, we assigned to all other producers and exporters the rate calculated for FerroVen, 22.84 percent.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of ferrosilicon from Venezuela as described in the ''Scope of the Investigation'' section, which was entered, or withdrawn from warehouse, for consumption on or after March 11, 2014, the date of publication of the *Preliminary Determination.* CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The rate for FerroVen will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the merchandise under consideration; (3) the rate for all other producers or

[11] *See* Letter Commerce from Petitioners ''Ferrosilicon From Venezuela; Investigation; Withdrawal of Request for Hearing'' (June 30, 2014); Letter from FerroVen ''Ferrosilicon from Venezuela. Case No. A–307–824: Withdrawal of Hearing Request'' (June 30, 2014).

[12] *See* Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, and Irene Gorelik, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V ''Verification of Home Market Sales of FerroAtlantica de Venezuela ('FerroVen') in the Antidumping Duty Investigation of Ferrosilicon from Venezuela'' (June 4, 2014) (''HM Verification Report''); Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, and Irene Gorelik, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V ''Verification of FerroAtlantica North America in the Antidumping Duty Investigation of Ferrosilicon from Venezuela'' (June 4, 2014) (''CEP Verification Report'').

[13] *See* Memorandum to the File from Laurens van Houten, Senior Accountant, through Michael Martin, Lead Accountant, and Neal Halper, Office Director ''Verification of the Cost Response Ferro Atlantica de Venezuela in the Antidumping Duty Investigation of Ferrosilicon from Venezuela'' (June 17, 2014) (''Cost Verification Report'').

[14] *See* Letter from Petitioners ''Ferrosilicon From Venezuela; Investigation; Case Brief of CC Metals and Alloys, LLC and Globe Specialty Metals, Inc.'' (June 26, 2014); Letter from FerroVen ''Ferrosilicon from Venezuela, Case No. A–307–824: Case Brief'' (June 26, 2014).

[15] *See* Letter from Petitioners ''Ferrosilicon From Venezuela; Investigation; Rebuttal Brief of CC Metals and Alloys, LLC and Globe Specialty Metals, Inc.'' (June 26, 2014); Letter from FerroVen ''Ferrosilicon from Venezuela, Case No. A–307–824: Rebuttal Brief'' (June 26, 2014).

[16] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Ferrosilicon from Venezuela'' dated concurrently with this notice (''Issues and Decision Memorandum'').

[17] *See* HM Verification Report; CEP Verification Report; Cost Verification Report.

[18] In this final determination, we determine that FerroAtlantica de Venezuela and FerroAtlantica, S.A., constitute a single entity. *See* Issues and Decision Memorandum at Comment 1, and Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V ''Calculations Performed for FerroAtlantica de Venezuela for the Final Determination in the Antidumping Duty Investigation of Ferrosilicon from Venezuela'' (July 24, 2014), at 2–3.

exporters will be 22.84 percent, as discussed in the ''All Others Rate'' section, above. These instructions suspending liquidation will remain in effect until further notice.

U.S. International Trade Commission (''ITC'') Notification

In accordance with section 735(d) of the Act, we notified the U.S. International Trade Commission (''ITC'') of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the merchandise under consideration. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: July 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Discussion of the Issues
1. Whether FerroVen and FASA Should Be Treated as a Single Entity
2. FerroVen's Purchases of Quartz
3. FerroVen's HM Interest Rate
4. U.S. Import Duties
5. Tax Adjustment to Certain HM Sales Based on Verification Observations
6. CEP Offset
7. General and Administrative Expense
8. Depreciation
9. Financial Expense Ratio
10. FASA's G&A Rate
VI. Recommendation

[FR Doc. 2014–18061 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain crystalline silicon photovoltaic products (''certain solar products'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is April 1, 2013, through September 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on January 29, 2014.[1] Pursuant to section 733(c)(1)(B) of the Act, the Department postponed this preliminary LTFV determination by a period of 43 days.[2]

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer

[1] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 79 FR 4661 (January 29, 2014) (''*Initiation Notice*'').

[2] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 30084 (May 27, 2014).

good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. We calculated constructed export prices and export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value (''NV'') in accordance with section 773(c) of the Act. Further, we determined to apply facts otherwise available with an adverse inference to the PRC-wide entity in accordance with sections 776(a) and (b) of the Act.

For a full description of the methodology underlying our conclusions, *see* the ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, (''Preliminary Decision Memorandum'') dated concurrently with this determination and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located in room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[3]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist for the exporter-producer combinations listed below during the period April 1, 2013 through September 30, 2013:

Exporter	Producer	Weighted-average dumping margin (percent)
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd.	26.33
Renesola Jiangsu Ltd./Renesola Zhejiang Ltd./Jinko Solar Co. Ltd./Jinko Solar Import and Export Co., Ltd.	Renesola Jiangsu Ltd./Jinko Solar Co. Ltd	58.87
Anji DaSol Solar Energy Science & Technology Co., Ltd	Anji DaSol Solar Energy Science & Technology Co., Ltd	42.33
Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.)	Asun Energy Co., Ltd. (a/k/a Suzhou Asun Energy Co., Ltd.).	42.33
Baoding Tianwei Yingli New Energy Resources Co., Ltd	Baoding Tianwei Yingli New Energy Resources Co., Ltd., Yingli Energy (China) Co., Ltd, and Lixian Yingli New Energy Co., Ltd.	42.33
BYD (Shangluo) Industrial Co., Ltd	BYD (Shangluo) Industrial Co., Ltd	42.33
Canadian Solar International Limited	Canadian Solar Manufacturing (Luoyang) Inc., Canadian Solar Manufacturing (Changshu), Inc.	42.33
Canadian Solar Manufacturing (Changshu), Inc	Canadian Solar Manufacturing (Changshu), Inc	42.33
Canadian Solar Manufacturing (Luoyang) Inc	Canadian Solar Manufacturing (Luoyang) Inc	42.33
CEEG Nanjing Renewable Energy Co., Ltd	CEEG Nanjing Renewable Energy Co., Ltd	42.33
Changzhou Almaden Co., Ltd	Changzhou Almaden Co., Ltd	42.33
Chint Solar (Zhejiang) Co., Ltd	Chint Solar (Zhejiang) Co., Ltd	42.33
ET Solar Industry Limited	ET Solar Industry Limited	42.33
Hainan Yingli New Energy Resources Co. Ltd	Hainan Yingli New Energy Resources Co. Ltd	42.33
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	42.33
Hanwha SolarOne (Qidong) Co., Ltd	Hanwha SolarOne (Qidong) Co., Ltd	42.33
Hanwha SolarOne Hong Kong Limited	Hanwha SolarOne (Qidong) Co., Ltd	42.33
Hefei JA Solar Technology Co., Ltd	Hefei JA Solar Technology Co., Ltd	42.33
Hengdian Group DMEGC Magnetics Co., Ltd	Hengdian Group DMEGC Magnetics Co., Ltd	42.33
Hengshui Yingli New Energy Resources Company Limited	Hengshui Yingli New Energy Resources Company Limited	42.33
Jiangyin Hareon Power Co., Ltd	Jiangyin Xinhui Solar Co., Ltd.; Altusvia Energy Taicang Co., Ltd.; Hareon Solar Technology Co., Ltd.	42.33
Jiawei Solarchina Co., Ltd	Jiawei Solarchina (Shenzhen) Co., Ltd	42.33
Jiawei Technology (HK) Ltd	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd	42.33
LDK Solar Hi-Tech (Nanchang) Co., Ltd	LDK Solar Hi-Tech (Nanchang) Co., Ltd	42.33
Lixian Yingli New Energy Company Ltd	Lixian Yingli New Energy Company Ltd	42.33

[3] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Weighted-average dumping margin (percent)
MOTECH (Suzhou) Renewable Energy Co., Ltd	MOTECH (Suzhou) Renewable Energy Co., Ltd	42.33
Ningbo Qixin Solar Electrical Appliance Co., Ltd	Ningbo Qixin Solar Electrical Appliance Co., Ltd	42.33
Perlight Solar Co., Ltd	Perlight Solar Co., Ltd	42.33
Risen Energy Co., Ltd	Risen Energy Co., Ltd	42.33
Shanghai JA Solar Technology Co., Ltd	Shanghai JA Solar Technology Co., Ltd	42.33
Shanghai Solar Energy Science & Technology Co., Ltd	Lianyungang Shenzhou New Energy Co., Ltd	42.33
Shenzhen Jiawei Photovoltaic Lighting Co. Ltd	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd	42.33
Shenzhen Sungold Solar Co., Ltd	Shenzhen Sungold Solar Co., Ltd	42.33
Shenzhen Topray Solar Co., Ltd	Shenzhen Topray Solar Co., Ltd	42.33
Sun Earth Solar Power Co., Ltd	Sun Earth Solar Power Co., Ltd	42.33
Sunny Apex Development Ltd	Shenzhen Jiawei Photovoltaic Lighting Co. Ltd., Wuhan FYY Technology Co., Ltd.	42.33
SunPower Systems SARL	SunEnergy (S.Z.) Co., Ltd	42.33
Upsolar Global Co., Ltd. and including Upsolar Group, Co., Ltd.	Shandong Dahai Group Co. Ltd	42.33
Wanxiang Import & Export Co., Ltd	Zhejiang Wanxiang Solar Co., Ltd	42.33
Wuhan FYY Technology Co., Ltd	Wuhan FYY Technology Co., Ltd	42.33
Wuxi Suntech Power Co., Ltd	Wuxi Suntech Power Co., Ltd	42.33
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd. and Lixian Yingli New Energy Co., Ltd.	42.33
Yingli Green Energy International Trading Limited	Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd., and Hainan Yingli New Energy Resources Co., Ltd.	42.33
Zhongli Talesun Solar Co., Ltd	Zhongli Talesun Solar Co., Ltd	42.33
PRC-Wide Rate		165.04

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance, through Enforcement and Compliance's electronic records system IA ACCESS, no later than seven days after the date on which the final verification report is issued in this proceeding.[4] Rebuttal briefs, limited to issues raised in case briefs, may be submitted through IA ACCESS no later than five days after the deadline for case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically through IA ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time. Hearing requests must be received by the Department within 30 days after the date of publication of this notice[6] and should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be presented at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of certain solar products from the PRC, as described in the ''Scope of the Investigation'' section above, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[7] equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies[8] and estimated domestic subsidy pass-through,[9] as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity, 164.04 percent; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

Certification Requirements

If an importer imports solar panels/modules that were assembled in the

[4] *See* 19 CFR 351.309(c).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.310(c).

[7] *See* Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

[8] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[9] For further discussion see the Preliminary Decision Memorandum.

PRC and it claims the panels/modules do not contain solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in the PRC, the importer is required to maintain the importer certification included in the Department's cash deposit instructions. The importer and exporter are also required to maintain the exporter certification included in the Department's cash deposit instructions if the exporter of the panels/modules for which the importer is making the claim is located in the PRC. The importer and PRC-exporter are also required to maintain sufficient documentation supporting their certifications. We note that while importers and PRC-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of an antidumping duty cash deposit on those entries equal to the PRC-wide rate in effect at the time of the entry.

If a solar panel/module assembled in the PRC contains some solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in the PRC, but the importer is unable, or unwilling, to identify the total value of the panel/module subject to provisional measures, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of an antidumping duty cash deposit on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to requests from the mandatory respondents Changzhou Trina Solar Energy Co., Ltd.,[10] and Renesola Jiangsu Ltd.,[11] we are postponing the final determination. Accordingly, we intend to make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[12] Further, Trina Solar and Renesola/Jinko requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly.[13]

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain solar products from the PRC, or sales (or the likelihood of sales) for importation, of the merchandise under consideration before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Attachment I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Preliminary Determination
5. Scope of the Investigation
6. Scope Comments
7. Selection of Respondents
8. Discussion of the Methodology
   a. Non-Market Economy Country
   b. Surrogate Country
   c. Surrogate Value Comments
   d. Separate Rates
   e. Margin for the Separate Rate Companies
   f. Combination Rates
   g. The PRC-Wide Entity
   h. Application of Facts Available and Adverse Facts Available
   i. Single Entity Treatment
   j. Date of Sale
   k. Fair Value Comparisons
   l. Export Price
   m. Constructed Export Price
   n. Normal Value
   o. Factor Valuation Methodology
   p. Comparisons to Normal Value
   q. Currency Conversion
9. Verification
10. Section 777A(f) of the Act
11. Conclusion

[FR Doc. 2014–18063 Filed 7–30–14; 8:45 am]

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[10] *See* letter from Changzhou Trina Solar Energy Co., Ltd. to the Secretary of Commerce regarding "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Request for Postponement of Final Determination" dated July 9, 2014.

[11] *See* letter from Renesola Jiangsu Ltd. to the Secretary of Commerce regarding "Certain Crystalline Silicon Photovoltaic Products from China; Request to Extend Final Determination" dated July 10, 2014.

[12] *See also* 19 CFR 351.210(b)(2) and (e).

[13] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is aligning the final determination in this countervailing duty (CVD) investigation of certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China (the PRC) with the final determination in the companion antidumping duty (AD) investigation.

DATES: *Effective Date:* July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Justin Neuman, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586 or (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2014, the Department initiated the AD and CVD investigations on certain solar products from the PRC.[1]

[1] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 79 FR 4667 (January 29, 2014), and *Certain Crystalline Silicon Photovoltaic Products From the People's*

On June 9, 2014, SolarWorld Industries America, Inc., *i.e.,* Petitioner, timely requested alignment of the deadline for the final CVD determination with the deadline for the final determination in the companion AD investigation of certain solar products from the PRC,[2] in accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.210(b)(4)(i), and 351.210(i). On June 10, 2014, the Department published the preliminary affirmative CVD determination pertaining to certain solar products from the PRC.[3]

Because the AD and CVD investigations were initiated simultaneously and involve the same class or kind of merchandise from the same country, we are aligning the deadline for the final CVD determination of certain solar products from the PRC with the deadline for the determination in the companion AD investigation of certain solar products from the PRC, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i). The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about December 16, 2014.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: July 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–18056 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–DS–P

Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 79 FR 4661 (January 29, 2014).

[2] *See* the June 9, 2014, Letter to the Secretary, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: Request to Align Countervailing Duty Final Determination with Antidumping Duty Final Determination.''

[3] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 79 FR 33174 (June 10, 2014).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD383

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes a notification of a 0.65-percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the fee percentage for the 2014/2015 crab fishing year so they can calculate the required payment for cost recovery fees that must be submitted by July 31, 2015.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS on or before July 31, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access system authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. NMFS developed the cost recovery provision to conform to statutory requirements and to partially reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. Additionally, section 313(j) requires the harvesting and processing sectors to each pay half the cost recovery fees. Catcher/processor quota share holders are required to pay the full fee percentage for crab processed at sea.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The crab allocations include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect his or her own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Program's cost recovery provision may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described in Federal regulations at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than, or greater than, the actual costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of a crab fishery year based on the fishery value and the costs of the prior year.

Using this fee percentage formula, the estimated percentage of costs to value for the 2013/2014 fishery was 0.65 percent. Therefore, the fee percentage will be 0.65 percent for the 2014/2015 crab fishing year.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 25, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–18000 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD402

Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud

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

ACTION: Notice of public meetings; request for comments.

SUMMARY: On June 17, 2014, the White House released a *Presidential Memorandum* entitled ''Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.'' Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce and made up of a broad range of other federal agencies. The Task Force is directed to report to the President within 180 days with ''recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.'' The public meetings and request for comments initiates a public engagement process aimed at gaining broad input and expertise from key stakeholders and interest groups to inform and advise the Task Force in developing recommendations in compliance with the Memorandum.

DATES: Comments must be received by September 2, 2014. The public meetings will be held in August. For specific dates, times, format or location, see ''Public Meetings'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–0214–0090, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Laurel Bryant, 1315 East-West Hwy., Rm. 14556, Silver Spring, MD 20910.

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 the Federal Task Force. 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. The Task Force 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: Laurel Bryant, Chief for External Affairs, Office of Communications, National Marine Fisheries Service, 301–427–8032.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a global leader in sustainable seafood. Over the course of the last 6 years, the United States has largely ended overfishing in federally managed waters and successfully rebuilt a record number of overfished stocks, with both overfishing and overfished fish stocks at all-time lows. This level of effective management and enforcement of domestic fishing regulations has supported near record highs in both landings and revenue for our domestic fishing industries. As a result, the United States scheme of science-based fisheries management is recognized internationally as a model for other countries as they work to end overfishing and implement sustainable practices.

However, fisheries are a global resource, and achieving sustainable fisheries management requires strong international commitment. One of the biggest global threats to sustainable fisheries is illegal, unreported, and unregulated (IUU) fishing. Impacts of IUU fishing undermine the environmental and economic sustainability of fisheries both domestically and abroad. By circumventing conservation and management measures and cutting or avoiding the operational costs associated with sustainable fishing practices and harvesting levels, entities engaged in IUU fishing undermine the sustainability of fish stocks and the broader ecosystem, and create an unfair advantage in the marketplace over legitimate fishing operations and legally caught seafood. Global losses attributable to IUU fishing have been estimated to be $10–23 billion annually. And while it is difficult to know the extent of seafood fraud, some surveys have found notable levels of mislabeling in retail operations across the U.S. The occurrence of seafood fraud through species substitution threatens consumer confidence, serving to further undermine the reputation and market competitiveness of our domestic seafood industry.

It is in the national interest of the United States to promote a framework that supports sustainable fishing practices and combats the sale of IUU fishing products and seafood fraud. To achieve these objectives, the United States will need to enhance the tools it has available to combat IUU fishing and seafood fraud. The Task Force has been established to achieve these objectives. These public meetings initiate the process for informing and advising the Task Force on identifying the priorities and opportunities to accomplish these objectives. The meetings are intended as listening sessions for the Task Force to hear from and engage with the public, and the communities of stakeholders and interest groups involved with these issues. For more information related to the Task Force and these issues, go to: *http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html.*

II. Topics for Comment and Discussion

Comment is particularly sought in response to the following questions:

1. How can the government better coordinate its efforts across the full suite of activities related to the seafood supply chain?
2. What existing authorities and tools should be enhanced to combat IUU fishing and seafood fraud?
3. What are the key opportunities at the international level to address these issues through the regional fishery management organizations and bilateral efforts, such as technical assistance and capacity building?
4. What existing authorities should be better coordinated or streamlined to strengthen and harmonize enforcement provisions of U.S. statutes for implementing international fisheries agreements?
5. What existing authorities should be better coordinated or streamlined to strengthen and harmonize efforts between agencies, including Federal, State and local?
6. What opportunities are there, whether existing or new, to work with industry and other partners, including foreign partners, to develop and implement measures such as traceability

programs to combat IUU fishing and seafood fraud?

7. How prevalent are mislabeling and species substitution within the domestic and foreign seafood supply in general? Where in the seafood supply chain is species substitution most likely to occur, and what role or actions can the federal government provide or enhance to address it?

8. To what extent is the comingling of seafood products from different origins an issue? Where along the supply chain does it occur?

9. What specific actions need to be taken to improve the transparency and traceability of seafood in the supply chain?

10. What are the actions and issues the Task Force should prioritize in developing its recommendations for addressing IUU fishing? What about seafood fraud?

11. What other topics related to IUU fishing and seafood fraud should the Task Force be aware of in developing and prioritizing recommendations?

III. Public Meetings

- August 13, 2014, 3–5 p.m. Eastern Daylight Time—Webinar/Conference Call, Conference Call Number: 888–324–0793, passcode: IUU Fishing.
- August 20, 2014, 3–5 p.m. Pacific Daylight Time—In-person meeting, Mayflower Park Hotel, 405 Olive Way, Seattle, Washington.
- August 27, 2014, 3–5 p.m. Eastern Daylight Time—Webinar/Conference Call, Conference Call Number: 888–324–0793, passcode: IUU Fishing.
- August 28, 2014, 1–3 p.m. Eastern Daylight Time—In-person meeting, Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue NW., Washington, DC 20001.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Samantha (Sam) Guidon, 301–427–8532 or email *Samantha.guidon@noaa.gov* at least 5 days prior to the meeting date.

Dated: July 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–18024 Filed 7–29–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 140710572–4572–01]

Privacy Act of 1974: System of Records

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

ACTION: Notice of Proposed Amendment to Privacy Act System of Records: ''COMMERCE/NOAA–15, Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.''

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Commerce proposes to amend the system of records entitled ''COMMERCE/NOAA–15, Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations'' to expand the number and types of evaluations, which will be used to identify the observers; provide input on observer evaluations; change the name of the system of records to ''COMMERCE/NOAA–15, Monitoring of National Marine Fisheries Service Observers;'' update routine uses; and generally update the system's notice. We invite public comment on the amended system announced in this publication.

DATES: To be considered, written comments must be submitted on or before September 2, 2014. Unless comments are received, the amended system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Benaka at (301) 427–8554.

ADDRESSES: Comments may be mailed to Lee Benaka, National Marine Fisheries Service (F/ST4), 1315 East West Highway, Silver Spring, MD 20910. Email comments may be submitted to *Observers.PrivacyAct@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), the National Marine Fisheries Service (NMFS) proposes this amendment is to expand the amount of information NMFS maintains on its observers. Specifically, NMFS proposes to expand the number of observer evaluations and the type of observer evaluations collected, and will store these evaluations with other observer personal records, which will be used to identify the observers; provide input on observer evaluations; and change the title of the system of records to better reflect the scope of the system of records. To implement these amendments, NMFS proposes to change the name of the system of records from ''COMMERCE/NOAA–15, Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations'' to ''COMMERCE/NOAA–15, Monitoring of National Marine Fisheries Service (NMFS) Observers''; amend certain provisions concerning the purpose of the system of records; update categories of individuals and records covered by the system; update the routine uses of the system; change procedures governing retrieval, storage, retention, disposal, and safeguards of the records in the system; and make other minor administrative updates.

NMFS deploys fishery observers to collect catch and bycatch data from U.S. commercial fishing and processing vessels. The authority to place observers on commercial fishing and processing vessels operating in U.S. fisheries is provided by the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act. These acts require the government to collect data on activities which affect marine resources. NMFS certifies, permits, and hires observers via observer provider companies, in order to place observers aboard U.S. commercial fishing and processing vessels. NMFS handles all observer-collected fisheries data and instructs and debriefs observers. High-quality data are essential to the successful management of these fisheries, and therefore, NMFS is creating a system of records to monitor the performance of observers. Through the routine use provision of the Privacy Act, NMFS will be sharing individual observer performance evaluations with each observer's employer (observer provider). This will enable observer providers to hire the best performing observers, which in turn helps to ensure that the highest-quality observer data will be collected.

NMFS created a system of records in October, 2001, to monitor the performance of observers in the Alaska region. Since that time, NMFS has made several changes to observer programs nationwide, which requires additional personal information to be collected and maintained by each of the regional observer programs. First, NMFS changed the qualifications and educational requirements for observer applicants in order to improve the caliber and suitability of applicants.

Second, NMFS began issuing certifications (permits) to observers in the Alaska region, which in turn brought legal requirements for the certification and decertification process. Third, NMFS began to collect more information relating to the performance of observers in order to justify the termination of an observer for performance reasons or, in the case of Alaska, to deny an applicant's certification or the revocation of an observer's permit (decertification). The amendments proposed in this notice implement these changes.

System Name:

COMMERCE/NOAA–15, Monitoring of National Marine Fisheries Service Observers.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

a. NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

b. NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02453–1097.

c. NMFS Southeast Fisheries Science Center, 4700 Avenue, Galveston, TX 77551–5997.

d. NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98115–0070.

e. NMFS West Coast Region, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

f. NMFS Pacific Islands Region, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Marine Fisheries Service observers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home address and phone number; email address; date of birth; previous (maiden) name; identification photo; resume and college transcript(s), date of last physical (medical exam) and criminal history; information concerning work-related injuries or illness; deployment and sampling (work effort) history; training and briefing history; performance comments concerning training, briefing, mid-cruise debriefing and final debriefing, logistics and data editing, along with final debriefing evaluations; performance comments from vessel/plant operator(s); observer certification denial and certification records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, as amended, Public Law 109–479; 16 U.S.C. 1853; implemented at 50 CFR 679.50.

PURPOSE(S):

The purpose of this system is to assemble in one system the necessary information to enable NMFS to access contact information in the event of an emergency involving an observer; contact an observer after their final debriefing, concerning the data they collected or possible fisheries violations they may have witnessed; identify an observer; provide identification badges to observers; allow observer resumes, transcripts, date of last physical (medical exam) and criminal history to be submitted to NMFS by the observer's employer (observer provider); access information concerning observer's work-related injuries or illness; access observers sampling questions/problems, fishing schedules, etc., which must be preserved for future reference as a communications log; access observer deployment and sampling (work effort) histories; access observer experience qualifications required in Federal regulation at 50 CFR 679.50 (j)(1)(v)(D) for certain vessel and fishery classifications; access observer training and briefing histories; access observer performance comments concerning training, briefing, mid-cruise debriefing and final debriefing, logistics and data editing, along with final evaluations; and access individual observer performance comments from vessel/plant operator(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. NMFS will make available to each observer provider, a NMFS-generated final evaluation, containing the information described below, for each observer deployment made under contract with that observer provider. Observer final evaluations are completed by observer program staff or authorized persons under contract with the observer program, for each observer upon the completion of each deployment. A deployment is a period of time when an observer is assigned to work aboard a fishing vessel(s) or at a shoreside plant(s). The final evaluations include the following information: observer name; observer provider name; debriefer name; cruise number; future training recommendation; mid-cruise briefing requirement; debriefing dates; cruise deployment history, including vessel or shore-side plant names, and dates deployed to each; deployment scores; and a narrative evaluating the observer's performance.

2. At NMFS discretion, NMFS-generated performance comments concerning training, briefing, mid-cruise debriefing and final debriefing, logistics and data editing, will be made available to an observer provider for the observer under contract with that observer provider. Observer performance comments are completed by observer program staff or authorized persons under contract with the observer program.

3. NMFS will make available upon request by an observer provider, an observer's final evaluation(s), deployment history and sampling (work effort) history for any observer they are considering for future employment. Observer deployment and sampling histories contain the observer's name and the following information for each vessel and shoreside plant assignment: vessel/plant name, cruise number, embark and disembark dates, number of days aboard each vessel/plant, number of collection days, number of hauls or sets sampled by vessel type, number of days at shore-side plants, year of deployment, name of employer (observer provider), evaluation score and indication of whether the observer worked alone or as the lead or second observer.

4. Alaska Fisheries Science Center only: will provide observer candidate certification denial records to the employer (observer provider) of any candidate that fails training. Certification denial records consist of a letter of certification denial and training performance records supporting the certification denial, such as exam scores, instructor comments and other records describing deficiencies in performance during training.

5. In the event that information in this system of records indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

6. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal,

including disclosures to opposing counsel in the course of settlement negotiations.

7. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

8. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

11. A record in this system of records may be disclosed to appropriate agencies, entities, and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored electronically on computers and/or as paper records in file folders individually named and kept in secure file cabinets.

Retrievability: Observers are assigned individual observer identification numbers and individual ''cruise'' (or deployment) numbers. Records can be electronically retrieved by observer name, observer identification number or cruise number.

Safeguards: Grounds and buildings employ security systems. Where electronic information is retrievable by computer or other mode of electronic information retrieval, all safeguards appropriate to secure the computer database or other system of storing electronic information, including hardware and software, are utilized. Paper records are maintained in secured file cabinets in areas that are accessible only to authorized personnel. Observer providers, to whom access to some of this information is granted in accordance with this system of records routine use provision, are instructed on the confidential nature of this information.

Retention and disposal: Retention and disposal is in accordance with the National Archives and Records Administration and the Department of Commerce record keeping procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director for the Fisheries Monitoring and Analysis Division, North Pacific Groundfish Observer Program, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Northeast Fisheries Observer Program Manager, NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02453–1097.

Southeast Fisheries Observer Program Manager, NMFS Southeast Fisheries Science Center, 4700 Avenue, Galveston, TX 77551–5997.

Northwest Fisheries Observer Program Manager, NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98115–0070.

West Coast Region Observer Program Coordinator, NMFS West Coast Region, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

Pacific Islands Fisheries Observer Program Manager, Pacific Islands Region, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818.

Notification Procedures: Privacy Act information contained in this system of records may be requested from the system manager at the address above and must be approved by the Office of General Counsel, NOAA. A requestor, including an observer seeking information about himself or herself, should provide name, address, date of application, and record(s) sought, pursuant to the inquiry provisions of the Department of Commerce's rules which appear in 15 CFR part 4b—Privacy Act.

Record Access Procedures: Requests from individuals should be addressed to: Same address of the desired location as stated in the System Manager section above.

Contesting Record Procedures: The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b—Privacy Act.

Record Source Categories: Fisheries observers, observer providers and observer program staff.

Exemptions Claimed for the System: None.

Dated: July 25, 2014.

Brenda Dolan,

Department of Commerce. Freedom of Information/Privacy Act Officer.

[FR Doc. 2014–18011 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD330

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Breakwater Replacement Project in Eastport, Maine

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Maine Department of Transportation (ME DOT) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to in-water construction activities in Eastport, Maine. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to incidentally harass, by Level B harassment, four species of marine mammals during the specified activity within a specific geographic region and is requesting comments on its proposal.

DATES: Comments and information must be received no later than September 2, 2014.

ADDRESSES: Comments on the application and this proposal should be

addressed to Jolie Harrison, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Hopper@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

NMFS is also preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at the foregoing internet site once it is finalized.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 21, 2014, NMFS received an application from ME DOT requesting an IHA for the take, by Level B harassment, of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harbor porpoises (*Phocoena phocoena*), and Atlantic white-sided dolphins (*Lagenorhynchus acutus*) incidental to in-water construction activities in Eastport, Maine. Upon receipt of additional information and a revised application, NMFS determined the application complete and adequate on May 6, 2014.

ME DOT and the Eastport Port Authority plan to replace and expand the pier and breakwater in Eastport, Maine. The project includes the removal of the original filled sheet pile structure (built in 1962), the replacement of the approach pier, expansion of the existing pier head, and the construction of a new wave attenuator. Because elevated sound levels from pile driving activities and the operation of an underwater saw have the potential to result in marine mammal harassment, NMFS proposes to issue an IHA for take incidental to in-water construction activities.

Description of the Specified Activity

Overview

The Eastport Breakwater is a solid fill multi-use pier serving the local fishing community by providing a safe harbor for berthing as well as a loading and off-loading point for the fishing fleet. It also serves as a berth for larger commercial and passenger ships and a docking area for U.S. Coast Guard vessels. It is an 'L' shaped structure with one leg perpendicular to the shoreline and the outer leg parallel (see Appendix A of the ME DOT IHA application). The existing pier was built in 1962 and is on the verge of being taken out of service due to public safety concerns. Recently, emergency repairs have been completed to prevent shutdown; however, these repairs are only temporary and will not keep the pier in service indefinitely. The recommended replacement structure would consist of an open pier supported by 151 piles, which would consist of steel pipe piles, reinforced concrete pile caps, and a prestressed plank deck with structural overlay. The proposed approach pier would be 40 ft by 300 ft and the proposed main pier section that would be parallel to the shoreline would be 50 ft by 400 ft.

Date and Duration of Proposed Activity

ME DOT plans to begin in-water construction in September 2014. The potential construction schedule is presented in Table 1. Although construction is expected to last more than one year, under the MMPA, NMFS can only issue an IHA for a one-year period; therefore, ME DOT will have to apply for another IHA to complete the project. Pile driving would only occur in weather that provides adequate visibility for marine mammal monitoring activities.

TABLE 1—EASPORT BREAKWATER CONSTRUCTION SCHEDULE

Activity	Duration	Expected timeframe	Approximate hours of in water noise producing activities with sound levels over 120 dB RMS	Pile type to be driven/activity resulting in harassment
Approach Pier Work	15–17 weeks	September 2014–January 2015	140	Sheet Piles.

TABLE 1—EASPORT BREAKWATER CONSTRUCTION SCHEDULE—Continued

Activity	Duration	Expected timeframe	Approximate hours of in water noise producing activities with sound levels over 120 dB RMS	Pile type to be driven/activity resulting in harassment
Construction of New Pile Supported Pier.	32–34 weeks	January 2015–August 2015	190	16–24 inch steel pipe piles.
Demolition of Old Pier	1 week of sheet removal, 6 weeks old fill removal.	August 2015–September 2015	25	Vibratory Extractor/Underwater Saw.
Breakwater Construction	6 weeks	October 2015–December 2015	50	N/A.
Installation of Fender Piles	2 weeks	October 2015–December 2015	15	24–36 inch steel pipe piles.

Specified Geographic Region

The proposed activity would occur in Cobscook Bay, in Eastport, Maine. The breakwater lies near the mouth of the St. Croix River at the end of a long peninsula adjacent to Quoddy Head. Cobscook Bay has extremely strong tidal currents and notably high tides, creating an extensive intertidal habitat for marine and coastal species. Water depths at the proposed project location are between 8–55 ft (2.4–17m). The Bay is considered a relatively intact marine system, as the area has not experienced much industrialization.

Detailed Description of Activities

The replacement pier will consist of two different sections. The approach pier will be replaced in kind by placing fill inside of a sheet pile enclosure, supported by driven piles. The approach section will consist of sheet piles that are driven just outside of the existing sheet piles. The sheet piles can be installed by use of a vibratory hammer only. The main pier, fender system, and wave fence system will be pile supported with piles ranging from 16 inch–36 inch diameter pipe piles. These piles will be driven with a vibratory hammer to a point and must be seated with an impact hammer to ensure stability. The breakdown of the size and amount of piles can be found in Table 2.

The vibratory hammer will drive the pile by applying a rapidly alternating force to the pile by rotating eccentric weights resulting in a downward vibratory force on the pile. The vibratory hammer will be attached to the pile head with a clamp. The vertical vibration in the pile functions by disturbing or liquefying the soil next to the pile, causing the soil particles to lose their frictional grip on the pile. The pile moves downward under its own weight, plus the weight of the hammer. It takes approximately one to three minutes to drive one pile. An impact hammer will be used to ensure the piles are embedded deep enough into the substrate to remain stable for the life of the pier. The impact hammer works by dropping a mass on top of the pile repeatedly to drive it into the substrate. Diesel combustion is used to push the mass upwards and allow it to fall onto the pile again to drive it.

TABLE 2—PROPOSED PILE TYPES AND AMOUNTS

[Approximate amounts]

Pile size and type	Amount proposed
16″ steel pipe pile	32
20″ steel pipe pile	97
24″ steel pipe pile	14
36″ steel pipe pile	8
Steel sheet pile	215

The breakwater component of the facility consists of two portions; sheet piles will be installed along the back of the main pier and the other portion will be full depth wave attenuator consisting of king piles and sheet piles. Each king pile is designed as a cantilever beam to resist lateral loads. The king piles may also be able to be used to anchor the floating docks. The wave attenuator will be placed on the inshore side of the pier structure to reduce overall length and eliminate interference with the berthing face.

Electrical and water utilities will be installed inside of the approach pier and also under the main pier. This will require a small amount of trenching under the main pier to bury portions of these lines.

At this stage of the project, the demolition of the old breakwater/pier system will take place. This is likely to be staged after a portion of the construction of the new pier is completed to help with access during demolition. The existing pier is a solid fill pier that is surrounded by sheet piles. Demolition will include removal of the fill material between the sheet piles, and cutting the sheet piles off at the mud line for removal. The fill will likely be removed with an excavator. Hydroacoustic impacts are also expected from using an underwater saw to cut off piles at the mud line.

Standard ME DOT construction best management practices (BMPs) will be used throughout the project. The erosion and sedimentation control BMPs can be found at the following link: *http://www.maine.gov/mdot/env/envdocs.htm.* A spill prevention, control, and countermeasure (SPCC) plan will also be required for the project. This plan will make sure that all contaminants are properly stored and a cleanup plan is in place in case of any spills.

The data included in Table 3 below is found in Technical Guidance for Assessment and Mitigation of the Hydroacoustic Effects of Pile Driving on Fish, prepared for Caltrans, 2009. The remaining data comes from the references below.

Caltrans states that drilling and saw cutting are anticipated to produce underwater sound pressure levels (SPLs) in excess of 120 dB RMS, but are not anticipated to exceed the 180 dB re 1 μPa (RMS) (79 FR 2421, January 14, 2014).

Installation of some of the pile anchors will require the use of a down hole hammer. The hydroacoustic impacts of a down hole hammer are largely unknown. Hydroacoustic measurements from work on the Memorial Bridge between Maine and New Hampshire suggest that these impacts may reach Peak SPL limits of 240 dB dB re 1 μPa. The down hole hammer will be required for installation of 14–24″ steel pipe piles.

TABLE 3—SUMMARY OF DATA FOR UNATTENUATED PILE STRIKES WITH AN IMPACT HAMMER AND DOWN HOLE HAMMER

Pile type/size	Relative water depth	Average sound pressure measured in dB		
		Peak	RMS	SEL
12″/Steel Pipe	<5 meters	192	177	
24″/Steel Pipe	~15 meters	207	194	178
36″/Steel Pipe	~10 meters	210	193	183
Down Hole Hammer	~3 meters	240		

TABLE 4—SUMMARY OF DATA FOR UNATTENUATED PILE DRIVING WITH A VIBRATORY HAMMER/UNDERWATER SAW

Pile type/size	Relative water depth	Average sound pressure measured in dB		
		Peak	RMS	SEL
12″/Steel Pipe	<5 meters	171	150	150
36″/Steel Pipe	~5 meters	180	170	170
24″/Steel Sheet	~15 meters	182	165	165
Underwater Saw	UNK		120–180	

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with known presence in this region of Cobscook Bay are the harbor seal, grey seal, harbor porpoise, and Atlantic white-sided dolphin (Table 5). The best available data for marine mammals in the vicinity of the project comes from the monitoring surveys conducted in preparation of the Ocean Renewable Power Company (ORPC) tidal generator project that was located between Eastport and Lubec, ME. Although the ORPC project was located on the other side of the peninsula from the Eastport pier, the presence of species and timing of their occurrence would be similar between the two sites.

TABLE 5—LIST OF MARINE MAMMAL SPECIES UNDER NMFS JURISDICTION THAT OCCUR IN THE VICINITY OF THE EASTPORT BREAKWATER REPLACEMENT PROJECT

Common name	Scientific name	Stock	ESA status	Abundance
Harbor Seal	*Phoca vitulina*	Western North Atlantic	Not listed	70,142.
Gray Seal	*Halichoerus grypus*	Western North Atlantic	Not listed	Over 250,000.
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine-Bay of Fundy	Not listed	79,883.
Atlantic White-sided Dolphin	*Lagenorhynchus acutus*	Western North Atlantic	Not listed	48,819.

ORPC has been conducting incidental visual observations of marine mammals in Cobscook Bay since 2007, during turbine testing, travel to and from ORPC's research vessel *Energy Tide 2,* and acoustic, fisheries, subtidal, and avian surveys. During this time, ORPC personnel and contractors, who have received specialized training in marine mammal observation and documentation, recorded approximately 252 4-hr observational periods over 222 days. Marine mammal observers recorded 57 seals, 47 harbor porpoises, and two Atlantic white-sided dolphins (Table 6). The most intensive monitoring effort was conducted in 2010, when approximately 71 marine mammals were observed over the course of 132 observation days between March 8 and December 31. Marine mammal observers recorded 2 dolphins, 27 harbor porpoises, and 42 harbor seals. This information is documented in ORPC's Marine Mammal Monitoring Plan for the Cobscook Bay Tidal Power Project (ORPC, 2011). No observations of any whale species have been made in Cobscook Bay by ORPC since monitoring began in 2007. In addition, a review of available databases does not indicate any recorded whale sightings in Cobscook Bay. Other species that may possibly occur in the vicinity of the proposed activity include North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaengliae*), fin whale (*Balaenoptera borealis*), minke whale (*Balaenoptera acutorostrata*), and sei whale (*Balaenoptera borealis*). However, these five species are generally associated with open ocean habitats and occur in more offshore locations. NMFS has concluded that the specified activity will not impact these five species and they are not discussed further.

TABLE 6—MARINE MAMMAL OBSERVATIONS IN THE PROPOSED PROJECT VICINITY BETWEEN DECEMBER 2007, AND DECEMBER 2010

Month	Hours of effort	Harbor and grey seal	Harbor porpoise	Atlantic white-sided dolphin
January	16	0	0	0
February	36	0	1	0
March	56	1	0	0
April	160	4	3	0
May	56	1	3	0
June	84	8	1	0
July	84	4	10	0
August	120	16	24	2
September	100	9	5	0
October	96	8	0	0
November	72	4	0	0
December	104	2	0	0
Total	1,008	57	47	2

Harbor Seals

Harbor seals are typically found in temperate coastal habitats and use rocks, reefs, beaches, and drifting glacial ice as haul outs and pupping sites. On the east coast, they range from the Canadian Arctic to southern New England, New York, and occasionally the Carolinas. There are an estimated 70,142 harbor seals in the western North Atlantic stock and the population is increasing. Harbor seals are not listed under the Endangered Species Act (ESA) nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm.*

Gray Seals

Gray seals reside in coastal waters and also inhabit islands, sandbars, ice shelves, and icebergs. The western North Atlantic stock ranges from eastern Canada to the northeastern United States. Current population numbers for the western North Atlantic stocks are unknown, but are estimated at over 250,000 animals. Most recent population estimates show increases in abundance in Canada and the United States, although the population in the Gulf of St. Lawrence appears to be declining. Gray seals pup at two established colonies off the coast of Maine: Green Island and Seal Island. Both colonies are tens of miles away from the proposed project site. Gray seals are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at *http://ww.nmfs.noaa.gov/pr/sepcies/mammals/pinnipeds/grayseal.htm.*

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.,* 2007).

Harbor Porpoises

Harbor porpoises reside in northern temperate and subarctic coastal and offshore waters. They are commonly found in bays, estuaries, harbors, and fjords less than 200 m (650 ft) deep. In the western North Atlantic, harbor porpoises range from west Greenland to Cape Hatteras, North Carolina. Harbor porpoises in United States waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the proposed project would be part of the Gulf of Maine-Bay of Fundy stock, which has an estimated abundance of 79,883 animals. Population trends for all U.S. stocks of harbor porpoises are currently unknown. Gulf of Maine-Bay of Fundy harbor porpoises are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/harborporpoise.htm.*

Cetaceans are divided into three functional hearing groups: Low-frequency, mid-frequency, and high-frequency. Harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth (lower to upper frequency hearing cut-off) ranges from 200 Hz to 180 kHz.

Atlantic White-Sided Dolphins

Atlantic white-sided dolphins are only found in temperate waters of the North Atlantic Ocean and typically reside along the continental shelf and slope. They range from Greenland to North Carolina and exhibit seasonal movements between inshore northern waters and southern offshore waters. The western North Atlantic stock has an estimated 48,819 animals, but there is insufficient information to determine population trends. Atlantic white-sided dolphins are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/whitesideddolphin_atlantic.htm.*

Atlantic white-sided dolphins are considered mid-frequency cetaceans and their estimated auditory bandwidth ranges from 150 Hz to 160 kHz.

Potential Effects of the Specified Activity on Marine Mammals

This section discusses the types of stressors associated with the specified activity (e.g., in-water construction) and their impacts on marine mammals. This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies that reported no reaction to sound from animals or exhibiting barely measureable avoidance). This discussion may also include reactions that we consider to rise to the level of take. This section provides background on potential effects and does not consider either the specific manner in which the proposed activity will be carried out or the

mitigation that may be implemented or how either influences the anticipated impacts of the specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by the proposed activity. The ''Negligible Impact Analysis'' section includes the analysis of how this specific activity will impact marine mammals and considers the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw preliminary conclusions regarding the likely impacts of the proposed activity on the reproductive success or survivorship of individuals and on the affected marine mammal populations or stocks.

Elevated in-water sound levels from pile driving and operating an underwater saw in the proposed project area may temporarily impact marine mammal behavior. Elevated in-air sound levels are not a concern because the nearest significant pinniped haul-out is more than six nautical miles (NM) away. Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, four marine mammal species (two cetacean and two pinniped species) are likely to occur in the area of the proposed activity. Of the two cetacean species likely to occur in the proposed project area, the Atlantic white-sided dolphin is classified as a mid-frequency cetacean and the harbor porpoise is classified as a high-frequency cetacean (Southall *et al.* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

ME DOT and NMFS determined that in-water construction activities involving the use of impact and vibratory pile driving and operation of an underwater saw during the Eastport Breakwater replacement project have the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the proposed activity.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that leads to TTS could cause PTS.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and sawing is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic and pile driving, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed construction activities at the Eastport Breakwater is confined in an area that is largely bounded by jetty and landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depths near the construction site, underwater sound propagation for low-frequency sound (which is the major noise source from pile driving and underwater sawing) is expected to be poor.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography), and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with breakwater replacement activities are expected to affect only a small number of marine mammals on an infrequent basis.

Visual Disturbance

The activities of workers in the project area may also cause behavioral reactions of marine mammals, such as pinnipeds flushing from haul-out sites, or moving farther from the disturbance to forage. No impacts from visual disturbance are anticipated because there are no known pinniped haul-outs within the proposed project area. The only potential disturbance anticipated to occur would be during diving operations, which may cause individual marine mammals to temporarily avoid the area. Therefore, the presence of workers would not result in population level impacts or affect the long-term fitness of the species.

Anticipated Effects on Marine Mammal Habitat

The proposed activities at the Eastport Breakwater would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near the pier and minor impacts to the immediate substrate during installation of piles and removal of the old structure during the breakwater replacement project.

Construction activities would produce both pulsed (i.e., impact pile driving) and continuous (i.e., vibratory pile driving and underwater saw) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 μPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength may cause injury to fish and fish mortality. The most likely impact to fish from pile driving and underwater sawing activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after these activities stop is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the pier replacement project.

Avoidance by potential prey (i.e., fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the vicinity of Cobscook Bay.

Given the short daily duration of sound associated with individual pile driving and sawing events and the relatively small areas being affected, in-water construction activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile the proposed in-water construction activities are not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying

particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

ME DOT proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Sound Attenuation Device

When using a diesel impact hammer to ''proof'' piles, ME DOT would use sound absorption cushions and/or a bubble curtain to reduce hydroacoustic sound levels and avoid the potential for marine mammal injury. Based on previous studies, sound attenuation devices are expected to reduce sound levels by at least 5 dB.

Exclusion Zone

The purpose of the proposed exclusion zone is to prevent Level A harassment (injury) of any marine mammal species. During all in-water impact pile driving, ME DOT would establish a preliminary marine mammal exclusion zone around each pile to avoid exposure to sounds at or above 180 dB. The preliminary exclusion zone is based on the results of ORPC's 2012 monitoring report and the reported ranges to the Level A and Level B harassment thresholds while driving 30-inch piles with a wood block cushion (Table 7).

TABLE 7—RANGE TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Hammer type	Range to Level A threshold (in meters)	Range to Level B threshold (in meters)
Vibratory ...	N/A	500
Impact	10	275

Prior to commencing pile driving, ME DOT would conduct hydroacoustic monitoring to measure sound from in-water construction activities. The hydroacousitc monitoring plan would include the following elements: Monitoring for dB (rms) levels at 10 m from the pile; monitoring at 100 m to proof the marine mammal monitoring areas; and real time reporting of noise levels to the construction team. ME DOT would provide NMFS with a report following completion of the hydroacoustic monitoring. Once hydroacoustic monitoring is conducted, the exclusion and buffer zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. The exclusion zone would be monitored continuously during impact pile driving to ensure that no marine mammals enter the area. Two protected species observers (PSOs) would be stationed on the pier. One PSO would be responsible for monitoring the exclusion zone, while the second observer would conduct behavioral monitoring outwards to a distance of 1 nm. Several floats anchored at 10 m (33 ft) and 305 m (1000 ft) would be located around the installation site to help identify when marine mammals are entering or within the exclusion zone. An exclusion zone for vibratory pile driving and underwater sawing is unnecessary as source levels would not exceed the Level A harassment threshold.

Impact Pile Driving Shut Down and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved 305 m (1000 ft) from the sound source or if the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward the 10-m (33-ft) exclusion zone during pile driving, pile driving would cease until that animal has moved 305 m (1000 ft) and is on a path away from the exclusion zone or 30 minutes has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each pile installation and each use of the underwater saw to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy or saw begins sawing. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. For operating the underwater saw, contractors would be required to turn on the saw 3 or 4 times for 2 to 3 seconds each time over the course of 30 seconds. Soft-start procedures would be conducted any time hammering ceases for more than 30 minutes.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of sound from impact and vibratory pile driving and operation of an underwater saw, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of sound from impact and vibratory pile driving and operation of an underwater saw, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of sound from impact and vibratory pile driving and operation of an underwater saw, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically

important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of sound from impact and vibratory pile driving and operation of an underwater saw that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

—Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

—Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

—Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli.

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring

Hydroacoustic monitoring would be performed at the initial installation of each pile driving method to ensure that the harassment isopleths are not extending past the calculated distances described in this notice and to assess the efficiency of the sound attenuation devices. ME DOT would designate two biologically-trained, on-site PSOs, approved in advance by NMFS, to monitor the exclusion zone (preliminarily set at 10 m [33 ft]) for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the exclusion zone. These PSOs would be positioned on the pier. One observer would survey inwards toward the pile driving site and the second observer would conduct behavioral monitoring outwards to a distance of 1 nm during all impact pile driving.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder as well as a digital SLR camera with telephoto lens and video capability) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If hydroacoustic monitoring indicates that threshold isopleths are greater than originally calculated, ME DOT would contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, downward adjustments may be made to the exclusion and buffer zone.

Reporting

ME DOT would be required to submit a report to NMFS within 90 days of completion of in-water construction activities. The report would include data from marine mammal sightings (such as date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (wind speed and direction, Beaufort sea state, cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, ME DOT would immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the Greater Atlantic Regional Fisheries Office Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ME DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ME DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ME DOT would immediately report the incident to the Permits and

Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the Greater Atlantic Regional Fisheries Office Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ME DOT to determine whether modifications in the activities are appropriate.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ME DOT would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the NMFS Stranding Hotline (866–755–6622) and/or by email to the Greater Atlantic Regional Fisheries Office Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hrs of the discovery. ME DOT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take of Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral Level B harassment is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for continuous noise (such as vibratory pile driving and underwater sawing). These levels are also considered precautionary.

TABLE 8—CURRENT ACOUSTIC EXPOSURE CRITERIA

Non-explosive sound		
Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous, noise)	120 dB re 1 microPa-m (rms).

Distances to NMFS' harassment thresholds were calculated based on the expected sound levels at each source and the expected attenuation rate of sound (Table 3). The 10-m (33-ft) distance to the Level A harassment threshold provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This would prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

Proposed Incidental Takes

The estimated number of marine mammals potentially taken is based on ORPC's marine mammal monitoring observations between 2007 and 2010. Based on marine mammal sightings during that period, further consultation between ORPC and NMFS, and the estimated number of pile driving and underwater sawing days for the Eastport Breakwater project, ME DOT requests authorization for the incidental take of 45 seals (because they cannot always be identified to the species-level), 39 harbor porpoises, and two Atlantic white-sided dolphins. The proposed take is based on the maximum group size of animals observed during ORPC's marine mammal observations (i.e., six seals, five to six harbor porpoises, and one Atlantic white-sided dolphin) multiplied by the maximum expected number of pile driving and underwater sawing days. These numbers are extremely conservative and indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth.

TABLE 8—ESTIMATED MARINE MAMMAL TAKES BY LEVEL B HARASSMENT

Common species name	Estimated take by Level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
Gray seal	45	Over 250,000 in western North Atlantic.	0.018	increasing.
Harbor seal		70,142 in western North Atlantic	0.049	N/A.
Harbor porpoise	39	79,883 in Gulf of Maine/Bay of Fundy.	0.043	N/A.
Atlantic white-sided dolphin	2	48,819 in the western North Atlantic.	0.003	N/A.

Preliminary Determinations

Negligible Impact

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species. ME DOT's proposed Eastport breakwater replacement project would involve pile driving and removal activities as well as the use of an underwater saw. Elevated noise levels are expected to be generated as a result of these activities. However, ME DOT would use noise attenuation devices (e.g., pile cushions, bubble curtains) during impact pile driving to ensure that sound levels of 180 dB (rms) do not extend more than 10 m from the pile, which eliminates the potential for injury (PTS) and TTS. Given the required mitigation and monitoring, no injuries or mortalities are anticipated to occur as a result of ME DOT's proposed action in Eastport, and none are proposed to be authorized. In addition, as described above, marine mammals in the area would not be exposed to activities or sound levels which would result in hearing impairment (TTS or PTS) or non-auditory physiological effects. The small number of takes that are anticipated to occur would be limited to short-term Level B harassment.

In-water construction activities would occur in relatively shallow coastal waters of Cobscook Bay. The proposed project area is not considered significant habitat for marine mammals. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. The closest significant pinniped haul out is more than 6 nm away (ME DOT, pers. comm.), which is well outside the project area's largest harassment zone. The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with breakwater replacement activities are expected to affect only a small number of marine mammals on an infrequent basis. Although it is possible that some individual marine mammals may be exposed to sounds from in-water construction activities more than once, the duration of these multi-exposures is expected to be low since animals would be constantly moving in and out of the area and in-water construction activities would not occur continuously throughout the day.

Marine mammals may be temporarily impacted by noise from pile driving activities and the operation of an underwater saw. These low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modifications by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, marine mammals are expected to avoid the area during in-water construction because animals generally move away from active sound sources, thereby reducing exposure and impacts. In addition, through mitigation measures including soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious and detection of marine mammals by observers would enable the implementation of shutdowns to avoid injury, serious injury, or mortality. In-water construction activities involving pile driving and underwater sawing are expected to occur for about 12 days total each month. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

Based on the application and subsequent analysis, the impact of the described in-water construction activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The amount of take NMFS proposes to authorize is considered small (less than one percent) relative to the estimated populations of 70,142 harbor seals, 250,000 gray seals, 79,883 harbor porpoises, and 48,819 Atlantic white-sided dolphins. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. This analysis will be completed prior to the issuance or denial of this proposed IHA. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ME DOT for the Breakwater Replacement Project in Eastport, Maine, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued). The language contained in the draft IHA is not intended for codification and would not be published in the Code of Federal Regulations, if issued. The draft IHA language is provided next.

1. This Authorization is valid from September 1, 2014 through August 31, 2015.

2. This Authorization is valid for in-water construction activities in Eastport, Maine for replacement of a pier and breakwater, as described in the Incidental Harassment Authorization (IHA) application.

3. ME DOT is hereby authorized to take, by Level B harassment only, 45 total grey and harbor seals (*Halichoerus grypus* and *Phoca vitulina*), 39 harbor porpoises (Phocoena phocoena), and two Atlantic white-sided dolphins (*Lagenorhynchus acutus*) incidental to in-water construction activities associated with the breakwater replacement project.

4. The taking by Level A harassment, serious injury, or mortality of any of the species listed in 3 above or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to NMFS' Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2276; phone 978–281–9328, and NMFS' Office of Protected Resources (NMFS), 1315 East-West Hwy, Silver Spring, MD 20910; phone 301–427–8401; fax 301–713–0376.

6. The holder or designees must notify NMFS' Greater Atlantic Regional Fisheries Office and Headquarters at least 24 hours prior to the seasonal commencement of the specified activity (see contact information in 5 above).

7. Mitigation Requirements—The holder of this Authorization is required to abide by the following mitigation conditions listed in 7(a)–(d). Failure to comply with these conditions may result in the modification, suspension or revocation of this Authorization.

(a) Sound Attenuation Device: When using an impact pile hammer to install piles, sound absorption cushions and/or a bubble curtain will be used to reduce hydroacoustic sound levels and avoid the potential for marine mammal injury.

(b) Establishment of an Exclusion Zone: During all in-water impact pile driving, ME DOT will establish a preliminary marine mammal exclusion and buffer zone of 10 m (33 ft) around each pile to avoid exposing marine mammals to sounds at or above 180 dB. The exclusion zone will be monitored continuously during all impact pile driving to ensure that no marine mammals enter the 10-m (33-ft) radius. Once underwater sound measurements are taken, the exclusion and buffer zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. An exclusion zone for vibratory pile driving or underwater sawing is unnecessary to prevent Level A harassment as source levels will not exceed the Level A harassment threshold.

(c) Pile Driving Shut Down and Delay Procedures: If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of impact pile driving, the observer will notify the on-site project lead (or other authorized individual), who will then be required to delay pile driving until the marine mammal has moved 305 m (1,000 ft) from the sound source or the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward the 152-m (500-ft) exclusion and buffer zone during pile driving, pile driving will cease until that animal has moved 305 m (1,000 ft) and is on a path away from the exclusion zone or 30 minutes has lapsed since the last sighting.

(d) Soft-start Procedures: A ''soft-start'' technique will be used at the beginning of each pile installation and each use of the underwater saw to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy or saw begins sawing. For vibratory pile driving, contractors will initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy, followed by a 1-minute waiting period. The procedure will be repeated two additional times before full energy may be achieved. For impact hammering, contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. For underwater sawing, contractors will turn on the saw 3 or 4 times for 2 to 3 seconds each time over the course of 30 seconds. The soft-start procedure will be conducted prior to driving each pile if hammering ceases for more than 30 minutes.

8. Monitoring Requirements—The holder of this Authorization is required to abide by the following monitoring conditions listed in 8(a)–(b). Failure to comply with these conditions may result in the modification, suspension, or revocation of this Authorization.

(a) *Visual Monitoring*

(i) The holder of this Authorization must designate at least two biologically-trained, on-site individual(s), approved in advance by NMFS, to monitor the exclusion and buffer zone (preliminarily set at 152 m [500 ft]) for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities. The protected species observer(s) shall conduct observations on the number, type(s), location(s), and behavior(s) of marine mammals in the designated exclusion zone (see Reporting section below).

(ii) Protected species observers must call for delay or shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 10 m [33 ft]).

(iii) The holder of this Authorization must designate at least two biologically trained, on-site individuals, approved in advance by NMFS, to conduct behavioral monitoring out to 1 nmi during all impact pile driving. In addition, observers will be stationed at the Level B harassment isopleth (4,600 m [2.5 mi]) during at least three events of vibratory pile driving/underwater sawing to conduct behavioral monitoring and validate take estimates.

(iv) Protected species observers will be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, range-finder, and digital SLR

camera with telephoto lens) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to in-water construction activities.

(v) NMFS must be informed immediately of any changes or deletions to any portions of the monitoring plan, as described in the application.

(b) *Hydroacoustic Monitoring*

(i) Underwater sound measurements will be taken at the initial installation of each pile driving method to ensure that the harassment isopleths are not extending past the estimated distances. Exclusion zones and harassment isopleths may be adjusted accordingly for marine mammals so that they are not exposed to Level A harassment sound pressure levels (180 dB). ME DOT will contact NMFS within 48 hours in order to make the necessary adjustments.

(ii) Persons conducting sound measurements shall coordinate with the pile driver operator and marine mammal observer(s) to determine which activities are occurring at the time measurements are taken and if any marine mammals are in the area.

9. Reporting Requirements—The holder of this Authorization is required to submit a report on all activities and visual and acoustic monitoring results to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of completion of in water construction activities.

(a) The visual monitoring report must contain the following information:

(i) Number of marine mammals observed and number taken, by species, and, if possible, sex and age class;

(ii) Marine mammal behavior patterns observed;

(iii) Marine mammal distances to pile driving or sawing activities;

(iv) Time pile driving begins and ends and if pile driving was occurring during a sighting;

(v) Time underwater sawing begins and ends if sawing was occurring during a sighting;

(vi) Time and locations of all marine mammal sightings;

(vii) environmental conditions, including but not limited to visibility, tide level and state (i.e., slack, ebb, flood), and sea state; and

(viii) other human activity in the area (e.g., vessel operation).

(b) The acoustic monitoring report must contain the following:

(i) Type of equipment used to collect acoustic data including frequency range;

(ii) estimated water depth of pile being driven and depth at which measurements were taken;

(iii) distances to the source where acoustic data were collected;

(iv) maximum, minimum, and average dB_{RMS} levels received at each measured distance;

(v) the type of pile driving method (i.e., impact or vibratory) associated with each collected measurement;

(vi) estimated rate of attenuation or transmission loss (TL) based on collected measurements; and

(vii) estimated source levels based on TL rate.

(c) In the unanticipated event that in-water construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury, or mortality, ME DOT shall immediately cease in-water construction activities and report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the Greater Atlantic Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel's speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (e.g. wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NFMS is able to review the circumstances of the prohibited take. NMFS shall work with ME DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ME DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(d) In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ME DOT will immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the Greater Atlantic Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the same information identified in Condition 9(c) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ME DOT to determine whether modifications in the activities are appropriate.

(e) In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 3 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ME DOT shall report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Brian.D.Hopper@noaa.gov* and the Greater Atlantic Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. ME DOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

10. A copy of this Authorization must be in the possession of the lead contractor on site and PSOs operating under the authority of this Incidental Harassment Authorization.

11. This Authorization may be modified, suspended, or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

NMFS requests comments on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for ME DOT's construction project in Eastport, Maine. Please include with your comments any supporting data or literature citations to help inform our final decision on ME

DOT's request for an MMPA authorization.

Dated: July 28, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18045 Filed 7–30–14; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0022]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the CPSC's Safety Standard for Toddler Beds (OMB No. 3041–0150). In the **Federal Register** of May 8, 2014 (79 FR 26417), the CPSC published a notice to announce the agency's intention to seek extension of approval of the collection of information. The Commission received no comments. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by September 2, 2014.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov,* under Docket No. CPSC–2010–0022.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Safety Standard for Toddler Beds.

OMB Number: 3041–0150.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of toddler beds.

Estimated Number of Respondents: 78 firms supply toddler beds with an estimated 10 models/firm annually.

Estimated Time per Response: 1 hour/model associated with marking, labeling, and instructional requirements.

Total Estimated Annual Burden: 780 hours (78 firms × 10 models × 1 hour).

General Description of Collection: The Commission issued a safety standard for toddler beds (16 CFR part 1217) in 2011, which was revised in 2013. Among other requirements, the standard requires manufacturers, including importers, to meet the collection of information requirements for marking, labeling, and instructional literature for toddler beds.

Dated: July 28, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–18003 Filed 7–30–14; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0112]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Contests, Challenges, and Awards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with CPSC-sponsored contests, challenges, and awards (OMB No. 3041–0151). In the **Federal Register** of May 6, 2014 (79 FR 25844), the CPSC published a notice to announce the agency's intention to seek extension of approval of the collection of information. We received one comment. The commenter states that contests should be targeted to specific consumer segments, eligibility requirements should be indicated in the rules, and that online communities geared toward problem solving should be engaged to provide solutions.

The CPSC contests that are directed toward raising awareness are targeted at relevant populations. For example, the poster contest to raise awareness on carbon monoxide poisoning was directed towards children and their families. In addition, consistent with the commenter's recommendation, CPSC contest materials and the related rules have listed applicable eligibility requirements. Finally, online problem solving communities are not precluded from entering contests open to the general public. Thus, we believe that CPSC's contests are consistent with the commenter's objectives. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by September 2, 2014.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov,* under Docket No. CPSC–2010–0112.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Contests, Challenges, and Awards.

OMB Number: 3041–0151.

Type of Review: Renewal of generic collection.

Frequency of Response: On occasion.

Affected Public: Contestants, award nominees, award nominators.

Estimated Number of Respondents: 500 participants annually. In addition, 20 participants may be required to provide additional information upon selection.

Estimated Time per Response: 5 hours/participant. 20 participants may require 2 additional hours each to provide additional information upon selection.

Total Estimated Annual Burden: 2,540 hours (500 participants × 5 hours/participant) + (20 participants × 2 hours/participant).

General Description of Collection: The Commission establishes contests, challenges, and awards to increase the public's knowledge and awareness of safety hazards. The Commission also recognizes those individuals, firms, and organizations that work to address issues related to consumer product safety through awards.

Dated: July 28, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–18002 Filed 7–30–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0087]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 2, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Record of Military Processing—Armed Forces of the United States; USMEPCOM Form 680–3A–E, DD Form 1966; OMB Control Number 0704–0173.

Type of Request: Revision.

USMEPCOM Form 680–3A–E:

Annual Burden Hours: 155,100 hours.

Number of Respondents: 423,000.

Responses per Respondent: 1.

Total Annual Responses: 423,000.

Average Burden per Response: 22 minutes.

DD Form 1966:

Annual Burden Hours: 141,000 hours.

Number of Respondents: 423,000.

Responses per Respondent: 1.

Total Annual Responses: 423,000.

Average Burden per Response: 20 minutes.

Total Annual Burden Hours: 296,100 hours.

Needs and Uses: This information collection requirement is necessary to gather the required data for determining eligibility to join the Armed Forces and for establishing personal records on those enlisting. USMEPCOM Form 680–3A–E serves as the initial medical release authorization, processing checklist and security verification form for applicants applying for military service to record qualification requirements. Information collected on USMEPCOM Form 680–3A–E is transferred electronically into DD Form 1966 and helps decrease administration time required to complete the applicant's record.

Affected Public: Individuals or households

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 24, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17789 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–23]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–23 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 23 2014

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-23, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Tunisia for defense articles and services estimated to cost $700 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 14–23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Tunisia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$440 million.
Other	$260 million.
Total	$700 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 12 UH–60M Black Hawk Helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE), 30 T700–GE–701D Engines (24 installed and 6 spares), 26 Embedded Global Positioning Systems/Inertial Navigation Systems, 24 M134 7.62mm Machine Guns, integration of Precision Guided Rocket System capability to permit launch of laser-guided variants of 2.75 rockets, 9,100 2.75 Hydra Rockets, 100 AGM–114R Hellfire Missiles, 20 M299 Hellfire Missile Pods, 24 M261 Hydra–70 Rocket Pods, 24 GAU–19 .50 cal Machine Guns, 15 Wescam MX–15Di or Brite Star II Electro-Optical Infrared Laser Designators, 6 Aviation Mission

Planning Systems, 1 Aviation Ground Power Unit, 30 AN/AVS–9 Night Vision Goggles, 15 AAR–57 Common Missile Warning Systems, 15 AN/APR–39A(V)4s Radar Warning Receivers, 15 AN/AVR–2B(V)1s Laser Warning Systems, 30 MXF–4027 Very High Frequency/Ultra High Frequency radios, 15 AN/APX–117 IFF Transponders, 15 Very High Frequency/Digitally Selective Calling radios, 15 ARN–147 VOR/ILS, 15 AN/ARN–153 Tactical Air Navigation Systems, and 15 AN/ARC–220 radios. Also included are aircraft warranty, ammunition, air worthiness support, facility construction, spare and repair parts, support equipment, communication equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program and logistics support.

(iv) *Military Department:* Army (USS)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 23 July 2014.

Policy Justification

Tunisia—UH–60M Black Hawk Helicopters

The Government of Tunisia has requested a possible sale of 12 UH–60M Black Hawk Helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE), 30 T700–GE–701D Engines (24 installed and 6 spares), 26 Embedded Global Positioning Systems/Inertial Navigation Systems, 24 M134 7.62mm Machine Guns, integration of Precision Guided Rocket System capability to permit launch of laser-guided variants of 2.75 rockets, 9,100 2.75 Hydra Rockets, 100 AGM–114R Hellfire Missiles, 20 M299 Hellfire Missile Pods, 24 M261 Hydra–70 Rocket Pods, 24 GAU–19 .50 cal Machine Guns, 15 Wescam MX–15Di or Brite Star II Electro-Optical Infrared Laser Designators, 6 Aviation Mission Planning Systems, 1 Aviation Ground Power Unit, 30 AN/AVS–9 Night Vision Goggles, 15 AAR–57 Common Missile Warning Systems, 15 AN/APR–39A(V)4s Radar Warning Receivers, 15 AN/AVR–2B(V)1s Laser Warning Systems, 30 MXF–4027 Very High Frequency/Ultra High Frequency radios, 15 AN/APX–117 IFF Transponders, 15 Very High Frequency/Digitally Selective Calling radios, 15 ARN–147 VOR/ILS, 15 AN/ARN–153 Tactical Air Navigation Systems, and 15 AN/ARC–220 radios. Also included are aircraft warranty, ammunition, air worthiness support, facility construction, spare and repair parts, support equipment, communication equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program and logistics support. The estimated cost is $700 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country in North Africa.

The proposed sale will improve Tunisia's capability to deter regional threats and strengthen its homeland defense, as well as support counter-terrorism operations. The sale of these UH–60 helicopters will bolster Tunisia's ability to provide border patrol, rapid reaction, and field expedient medical evacuation for its air and ground forces in counter-terrorism and border security operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft Company in Stratford, Connecticut; and General Electric Aircraft Company in Lynn, Massachusetts. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale may require the assignment of an additional three U.S. Government and five contractor representatives in Tunisia to support the delivery and training for approximately two–five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vii

(vii) Sensitivity of Technology

1. The UH–60M aircraft is a medium lift aircraft that includes two T–701D Engines and the integrated flight and management system, which provides aircraft system, flight, mission, and communication management systems. The cockpit includes five Multifunction Displays (MFDs), two General Purpose Processor Units (GPPUs), two Control Display Units (CDUs) and two Data Concentrator Units (DCUs). The Navigation System will have Embedded GPS/INS (EGIs), and two Digital Advanced Flight Control Systems (DAFCS).

2. The CN–1689–(H–764GU) Embedded GPS/INS (EGI) unit contains sensitive GPS technology. This GPS unit will have a Standard Positioning System configuration.

3. The AN/AVS–6 Night Vision Goggles are sensitive.

4. The AN/AAR–57 Common Missile Warning Systems (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate counter-measures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified Confidential; and releasable technical manuals for operation and maintenance are classified Secret.

5. The AN/APR–39A(V)4 Radar Warning Receivers provide warning of a radar directed air defense threat and allows appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

6. The AN/AVR–2B(V)1 Laser Warning Systems are classified. The AN/AVR–2B Laser Detecting Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

7. The Hellfire missile is an air-to-surface missile with a multi-mission, multi-target, precision strike capability. The Hellfire can be launched from multiple air platforms and is the primary precision weapon for the United States.

8. The highest level for release of the AGM–114R Hellfire II missile is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the

highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified up to Secret.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Tunisia.

[FR Doc. 2014–18022 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–24 with attached transmittal and policy justification.

Dated: July 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 23 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-24, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of the Philippines for defense articles and services estimated to cost $61 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 14–24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of the Philippines

(ii) *Total Estimated Value:*

Major Defense Equipment*	$31 million.
Other	$30 million.
Total	$61 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:* Two (2) C–130T Aircraft, and 10 T56–16 engines (8 installed and 2 spares) from Department of Defense stock. Also included are logistical sustainment and support for a period of three years, modification equipment and labor costs, spare and repair parts, support equipment, publications and technical documentation, aircraft ferry support, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (SCF).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 23 July 2014.

Policy Justification

Government of the Philippines—C–130T Aircraft

The Government of the Philippines has requested a possible sale from Department of Defense stock of two (2) C–130T Aircraft, and 10 T56–16 engines (8 installed and 2 spares). Also included are logistical sustainment and support for a period of three years, modification equipment and labor costs, spare and repair parts, support equipment, publications and technical documentation, aircraft ferry support, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics and program support. The estimated cost is $61 million.

This proposed sale would contribute to U.S. security and foreign policy goals by building the Philippines' maritime domain security capacity and deepening our overall strategic partnership with the Philippines.

The Government of the Philippines desires these additional C–130s to bolster its lift capabilities, which are essential for providing humanitarian assistance and disaster relief. The Philippines will use this increased lift capability to improve the mobility and resupply of its forces and for the provision of humanitarian assistance in the Philippines and the wider region, thereby reducing the potential level of U.S. assistance requested/needed for these purposes. The Philippine Air Force (PAF) already has C–130 aircraft in its inventory and will have no difficulty absorbing these additional aircraft.

The proposed sale of these aircraft and support will not alter the basic military balance in the region.

Contractor requirements are still being researched, and will be fulfilled through open competition. Should USG representatives or contractor support in-country be required in support of the case, length of time in-country will be minimized to the maximum practical extent. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–18023 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Civilian Physicians and Dentists Clinical Specialties and Tables; Correction

AGENCY: Department of Defense.

ACTION: Notice; correction.

SUMMARY: On Friday, July 25, 2014 (79 FR 43445–43446), the Department of Defense published a notice titled Department of Defense (DoD) Civilian Physicians and Dentists Clinical Specialties and Tables. Subsequent to the publication of the notice, DoD realized that the **DATES** section was missing a sentence informing the public of the 30-day public comment period. The corrected **DATES** section is printed as set forth in this notice.

The first sentence in the **SUPPLEMENTARY INFORMATION** section of the published notice is also corrected to include a reference to a 90-day effective date, rather than a 60-day effective date. This notice corrects this error.

DATES: Effective dates: Revisions are effective on October 23, 2014. Comments will be accepted on or before August 25, 2014.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 7431(e)(1)(C), amounts prescribed under paragraph 7431(e) shall be published in the **Federal Register**, and shall not take effect until at least 90 days after date of publication.

Dated: July 25, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17977 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Independent Review Panel on Military Medical Construction Standards; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Independent Review Panel on Military Medical Construction Standards (''the Panel'').

DATES:

Monday, August 18, 2014

10:00 a.m.–11:15 a.m. PDT (Open Session)
11:15 a.m.–2:00 p.m. PDT (Preparatory Meeting)
2:00 p.m.–4:15 p.m. PDT (Open Session)

Tuesday, August 19, 2014

8:00 a.m.–10:30 a.m. PDT (Open Session)
10:30 a.m.–5:00 p.m. PDT (Preparatory Meeting)

Wednesday, August 20, 2014

8:00 a.m.–10:00 a.m. PDT (Open Session)
10:00 a.m.–4:00 p.m. PDT (Preparatory Meeting)

ADDRESSES: Naval Hospital Camp Pendleton, 200 Mercy Circle, Camp Pendleton, CA 92055 on Monday, August 18, 2014; Kaiser Permanente Central Hospital Construction Office, 5251 Viewridge Court, San Diego, CA 92123 on Tuesday, August 19, 2014; Naval Medical Center San Diego, 34800 Bob Wilson Drive, San Diego, CA 92134 on Wednesday, August 20, 2014.

FOR FURTHER INFORMATION CONTACT: The Director is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *christine.bader@dha.mil,* (703) 681–6653, Fax: (703) 681–9539. For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *kendal.brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

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

At this meeting, the Panel will address the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year 2011 (Pub. L. 111–383), Section 2852(b) requirement to provide the Secretary of Defense independent advice and recommendations regarding a construction standard for military medical centers to provide a single standard of care, as set forth below:

a. Reviewing the unified military medical construction standards to determine the standards consistency with industry practices and benchmarks for world class medical construction;

b. Reviewing ongoing construction programs within the DoD to ensure

medical construction standards are uniformly applied across applicable military centers;

c. Assessing the DoD approach to planning and programming facility improvements with specific emphasis on facility selection criteria and proportional assessment system; and facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the Military Departments;

d. Assessing whether the Comprehensive Master Plan for the National Capital Region Medical (''the Master Plan''), dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Pub. L. 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the Master Plan result in world class military medical centers in the National Capital Region; and

e. Making recommendations regarding any adjustments of the Master Plan that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the Panel meeting is open to the public from 10:00 a.m. to 11:15 a.m. and from 2:00 p.m. to 4:15 p.m. on August 18; 8:00 a.m. to 10:30 a.m. on August 19; and 8:00 a.m. to 10:00 a.m. on August 20, 2014, as the Panel will meet with senior military and civilian healthcare leaders to discuss facility design standards and benchmarking processes.

Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the August 18–20, 2014 meeting, as well as any other materials presented in the meeting, may be obtained at the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Friday, August 8, 2014, to register and make arrangements for an escort, if necessary. Public attendees requiring escort should arrive with sufficient time to complete security screening no later than 30 minutes prior to the start of each meeting. To complete security screening, please come prepared to present two forms of identification and one must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the Panel may do so in accordance with 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the Panel may do so by submitting a written statement to the Director (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the Director may choose to postpone consideration of the statement until the next open meeting.

The Director will review all timely submissions with the Panel Chairperson and ensure they are provided to members of the Panel before the meeting that is subject to this notice. After reviewing the written comments, the Panel Chairperson and the Director may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The Director, in consultation with the Panel Chairperson, may allot time for members of the public to present their issues for review and discussion by the Panel.

Dated: July 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–18004 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2014–0025]

Proposed Collection; Comment Request

AGENCY: DoD Commerical Airlift Division (HQ AMC/A34B), Department of the Air Force, Department of Defense.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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.

DATES: Consideration will be given to all comments received by September 29, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DoD Commercial Airlift Division (A34B), ATTN: Ms. Racheal Whitlow, 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225–5302, or call HQ AMC/A34B, DoD Commercial Airlift Division at 618–229–4801.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Statement of Intent, AMC Form 207; OMB Control Number 0701–0137.

Needs and Uses: The information collection requirement is necessary to the Department of Defense Commercial Airlift Division (HQ AMC/A34B) and is responsible for the assessment of a commercial air carrier's ability to provide quality, safe, and reliable airlift to the Department of Defense. HQ AMC/A34B uses Air Mobility Command (AMC) Form 207 to acquire information needed to make a determination if the commercial carriers can support the Department of Defense. Information is evaluated and used in the approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carriers service to the Department of Defense.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 300 hours.

Number of Respondents: 15.

Responses per Respondent: 1.

Average Burden per Response: 20 hours.

Frequency: On occasion.

Respondents are commercial air carriers desiring to supply airlift services to DoD. AMC Form 207 provides vital information from the carriers needed to determine their eligibility to participate in the DoD Air Transportation Program.

Dated: July 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2014–18025 Filed 7–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NCP Coatings, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to NCP Coatings, Inc. a revocable, nonassignable, exclusive license to practice in the field of use of manufacture and sale of single-component moisture-curable coatings for commercial marine, architectural, industrial OEM, and amusement park structural applications to metallic surfaces which require abrasion and oil/grease resistance and for U.S. Government applications in the United States, the Government-owned invention described in U.S. Patent Application No. 14/187,568: Single-Component Moisture-Curable Coatings Based on N-Substituted Urea Polymers with Extended Chains and Terminal Alkoxysilanes, Navy Case No. 102,270 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 15, 2014.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: July 25, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–18017 Filed 7–30–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; VIC Technology Venture Development, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to VIC Technology Venture Development, LLC a revocable, nonassignable, exclusive license to practice in the field of use of assistive devices for providing enhanced understanding of human speech for hearing-impaired individuals, for communication in acoustically noisy environments, for language interpretation, for voice control of other devices, and for security/surveillance applications in the United States, the Government-owned invention described in U.S. Patent Application No. 13/155,218: Radar Microphone Speech Recognition, Navy Case No. 100,567 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 15, 2014.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: July 24, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–18018 Filed 7–30–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0112]

Agency Information Collection Activities; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 29, 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–0112

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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 6,149.

Total Estimated Number of Annual Burden Hours: 1,165.

Abstract: The HEAL Lender's Application for Insurance Claim and the Request for Collection Assistance forms are used in the administration of the Health Education Assistant Loan (HEAL) program. The HEAL program provided federally insured loans to students in certain health professions disciplines, and these forms are used in the administration of the HEAL program. The Lender's Application for Insurance Claim is used by the lending institution to request payment of a claim by the Federal Government. The Request for Collection Assistance form is used by the lender to request pre-claim assistance from the Department. Section 525 of the Consolidated Appropriations Act, 2014, transferred the collection of the Health Education Assistance Loan (HEAL) program loans from the U.S. Department of Health and Human Services (HHS) to the U.S. Department of Education (ED).

Dated: July 28, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–18001 Filed 7–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Postsecondary Educational Institutions To Participate in Experiments Under the Experimental Sites Initiative; Federal Student Financial Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary invites postsecondary educational institutions (institutions) that participate in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (the HEA), to apply to participate in new institutionally-based experiments under the Experimental Sites Initiative (ESI). Under the ESI, the Secretary has authority to grant waivers from certain title IV, HEA statutory or regulatory requirements to allow a limited number of institutions to participate in experiments to test alternative methods for administering the title IV, HEA programs. The alternative methods of title IV HEA administration that the Secretary is permitting under the ESI are designed to facilitate efforts by institutions to test certain innovative practices aimed at improving student outcomes.

DATES: Letters of application to participate in any of the proposed experiments described in this notice must be received by the Department no later than September 29, 2014 in order for an institution to receive priority to be considered for participation in the experiment. Letters received after September 29, 2014 may still, at the discretion of the Secretary, be considered for participation.

ADDRESSES: Letters of application must be submitted by electronic mail to the following email address: *experimentalsites@ed.gov.* For formats and other required information, see ''Instructions for Submitting Letters of Application'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Warren Farr, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Washington, DC 20002. Telephone: (202) 377–4380 or by email at: *Warren.Farr@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Instructions for Submitting Letters of Application

Letters of application should take the form of a PDF attachment to an email message sent to the email address provided in the **ADDRESSES** section of this notice. The subject line of the email should read ''ESI 2014—Request to Participate.'' The text of the email should identify the experiment, or experiments, the institution wishes to participate in by the title used in the ''The Experiments'' section under **SUPPLEMENTARY INFORMATION** (e.g., ''Experiment– Prior Learning Assessment''). The letter of application should be on institutional letterhead and be signed by at least two officials of the institution—one of these officials should be the institution's financial aid administrator, and the other should be an academic official of the institution. The letter of application must include the institution's official name and Department of Education Office of Postsecondary Education Identification (OPEID), as well as a mailing address,

email address, FAX number, and telephone number of a contact person at the institution.

Background

In August 2013, President Obama outlined an ambitious new agenda to combat rising college costs and make college more affordable for American families. The President has since engaged a wide range of stakeholders to advance the college costs agenda, through the College Opportunity Summit earlier this year and other efforts to identify ways to increase postsecondary educational opportunities and improve outcomes for students.

One component of the President's plan is to remove barriers that stand in the way of innovation in higher education, including barriers that prevent the use of new technologies or adoption of alternative approaches to teaching and learning that could improve students' academic outcomes.

In support of the President's agenda, the Secretary, under the Experimental Sites Initiative (ESI) authority of section 487A(b) of the HEA, is offering institutions the opportunity to participate in one or more of the following experiments that will waive certain statutory and regulatory requirements related to the title IV, HEA programs:

- Prior Learning Assessment—Provides that a student's title IV cost of attendance (COA) can include costs incurred by the student for assessments of prior learning and that a student's Federal Pell Grant enrollment status may, with limitations, take into account a student's efforts to prepare materials for a prior learning assessment.
- Competency-Based Education—Provides flexibility in how institutions provide Federal student aid to students enrolled in self-paced competency-based education programs.
- Limited Direct Assessment—Provides flexibility for an institution to provide a mix of direct assessment coursework and credit or clock hour coursework in the same program.
- Federal Work Study (FWS) for Near-Peer Counseling—Provides flexibility for institutions to compensate FWS students, who are employed as ''near-peer'' counselors, to high school students solely with Federal funds.

Details of each experiment are provided in the ''The Experiments'' section below.

This notice follows the notice published in the **Federal Register** on December 6, 2013 (78 FR 73518), which solicited suggestions from institutions for new experiments under the ESI. In response, the Department received submissions from a diverse range of institutions and other interested parties. The new experiments described in this notice, and their design, were informed by many of the ideas that were submitted. Additional experiments relating to the December 2013 solicitation may be announced in the future.

Under the waiver authority granted to the Secretary under section 487A(b) of the HEA, each experiment will be designed to test whether proposed changes to current requirements improve the administration of the title IV programs. Evidence gathered from the experiments may inform future changes in policy through statute or regulation.

Reporting and Evaluation

The Department is interested in obtaining information in ways that will allow for a reliable evaluation of each experiment. Participating institutions may be required to collect, maintain, and provide information not only for students whose title IV aid is administered under an experiment, but also for a control or comparison group of otherwise similar students whose title IV aid was administered under existing requirements. Examples of likely reporting requirements include, for each experiment: Numbers of students, their enrollment status, the types and amounts of grant and loan assistance received by the students, and grade point averages and other reflections of academic performance.

In addition, institutions that are selected for participation in an experiment will be required to submit a narrative description and evaluation of their implementation of the experiment. At a minimum, the narrative should include any unforeseen challenges and unexpected benefits.

The specific evaluation and reporting requirements will vary among the experiments and will be finalized prior to the start of each experiment.

Application and Selection

Institutions may apply to participate in one or more of the experiments described in this notice. From the institutions that apply, the Secretary will select a limited number to participate in each experiment. The Secretary intends to select a diverse cross-section of title IV eligible institutions for participation in the experiments, carefully considering the diversity of participating institutions by, among other characteristics, institutional type and control, geographic location, enrollment size, and title IV participation levels. Further, although not a selection requirement, the Secretary encourages institutions to include high-need students, adult students, and working students among those whose title IV aid will be administered under the experiment. The Secretary may consider an institution's effort to include such students when selecting institutions to participate in an experiment.

The selection of institutions will be guided by the purpose of the ESI, which is to evaluate alternatives to current requirements, and to inform policymakers about the possibility of changes to those requirements. The ESI is not designed to provide broad regulatory relief or general exceptions to the statutory and regulatory requirements.

Institutions selected to participate in an experiment must have a strong track record in the administration of the title IV HEA, programs. When selecting institutions, the Secretary will consider all information available about an institution including, but not limited to, evidence of programmatic compliance, cohort default rates, financial responsibility ratios, and, for for-profit institutions, ''90/10'' funding levels.

If a selected institution consists of more than one location (e.g., campus), the Secretary may limit experiments to a single location, unless the institution provides the Secretary with a rationale for expanding the experiment to one or more of the institution's other locations.

Prior to the established deadlines or before commitments are finalized, the Secretary will consult with participating institutions on the final design of the experiments through Webinars or other outreach activities.

Institutions selected for participation in an experiment will have their Program Participation Agreement (PPA) with the Secretary amended to reflect the specific statutory or regulatory provisions that the Secretary has waived for participants in the experiment. The institution must acknowledge its commitment to administer any experiments it agrees to participate in adequately by establishing any needed procedures and by coordinating with other institutional offices and staff in order to successfully administer the experiments. The amended PPA will also document the agreement between the Secretary and the institution about how the experiment will be conducted and will specify the evaluation and reporting requirements for the experiments.

The Experiments

Prior Learning Assessments—Use of Title IV Aid for Costs of Prior Learning Assessments

Background

Section 472 of the HEA indicates that a student's ''cost of attendance'' (COA or title IV COA), for the purpose of calculating a student's financial need for title IV aid, includes components for tuition and fees, books and supplies, room and board, transportation, dependent care, and miscellaneous expenses.

The regulations at 34 CFR 668.2 provide, in general, that a ''full-time student'' is an enrolled student who is carrying a full-time academic workload, as determined by the institution. Generally, for an undergraduate student, an institution's minimum standard for full-time status must be at least 12 semester, trimester, or quarter hours for each term. A student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as full-time.

The regulations at 34 CFR 600.2 provide that a credit hour approximates either an amount of instruction and out-of-class work or an equivalent amount of work for other academic activities, as established by the institution.

Many students, particularly adults and those who have previously participated in the workforce or who are military veterans, possess skills and knowledge in a wide range of areas obtained prior to their enrollment in postsecondary education. For purposes of this experiment, these skills and knowledge are referred to as ''prior learning.'' Students who are able to demonstrate that such prior learning meets some of the academic requirements for a postsecondary degree or other credential may be more likely to complete their academic program in a shorter period of time than other students, and with reduced costs and reduced borrowing. Generally, students must incur the costs for any assessment of such prior learning (prior learning assessment or PLA). Often such costs are related to the assessment itself, such as test fees or fees for portfolio reviews. Under existing title IV rules, these costs cannot be included in a student's COA since they do not result from the educational program offered by the institution.

Many PLAs require the student to spend a considerable amount of time preparing materials for the assessment. This most typically involves the effort to prepare a portfolio or other evidence of the prior learning. Under existing rules, even if, for the institution's own academic purposes, the institution were to establish some equivalency in clock or credit hours for the time the student spent preparing materials for the assessment, those hours would not count towards the student's enrollment status for purposes of calculating the student's COA and for determining title IV aid award amounts because those activities would not involve instruction by the institution.

Allowing the inclusion of prior learning assessments costs to students' COA could result in some students receiving aid for those costs and may allow more students to apply their prior learning toward completion of an educational program.

Description

This experiment will provide limited waivers of statutory and regulatory requirements to allow institutions to include in a student's COA reasonable costs, such as test fees, that are incurred by the student for the assessment of prior learning. Reasonable costs would not include any per clock or credit hour fee associated with the hours that the institution determines will apply toward completion of the student's academic program.

The increased COA would be used to determine the student's eligibility for and amount of title IV aid for the payment period or enrollment period when the student is enrolled in a title IV eligible program.

This experiment will also provide limited waivers of statutory and regulatory requirements to allow a limited number of credit hours to apply to a student's Federal Pell Grant (or Iraq-Afghanistan Service Grant) enrollment status determination relative to the effort required of the student to prepare for the prior learning assessment. The increase to the student's Pell Grant enrollment status would not apply to the student's enrollment status for purposes of other title IV aid. Any resulting increase in the student's Pell Grant award may be provided only as a direct disbursement to the student or it must be treated as a title IV credit balance that is provided to the student (see 34 CFR 668.164(e)).

For the purposes of this experiment, preparation does not mean the time taken by a student to study for a test or examination or the time spent taking the test or examination. Rather, it means time spent by the student during the relevant payment period preparing any materials required to demonstrate the learning that will be assessed.

If the institution determines that the effort required of a student to prepare materials for an assessment of prior learning is equivalent to a certain number of credit hours, it may add up to a maximum of three additional credit hours to the student's Pell Grant enrollment status for the payment period during which the student prepared the materials for the assessment. The three credit hour limit applies even if the institution determines that successfully meeting the assessment would require more time from the student than would be associated with three credit hours.

Determinations regarding COA and Pell Grant enrollment status adjustments associated with a PLA under this experiment must reflect the expenses, time, and effort spent by individual students, not a group or class of students.

It is expected that a successful assessment of a student's prior learning will result in the institution determining that the student has met all or part of the requirements for the program, without the student having to enroll in and complete additional coursework. Some institutions may simply award a certain number of academic credits to the student. While such additional hours may be applied toward completion of the student's program, they cannot, under both current requirements and under this experiment, count towards the student's title IV enrollment status. The benefit to the student is the reduction in the number of credits the student must earn to complete the program.

For example, a student may wish to demonstrate proficiency in music composition by assembling a portfolio of the musical scores she has written for assessment by a third party PLA provider who charges the student $300 for that assessment. Under this experiment, the institution would, with proper documentation that the expense was incurred and is the responsibility of the student to pay, include in the student's title IV COA an additional $300 for the cost to the student of the portfolio assessment.

The institution determines that the effort required of the student to prepare her portfolio of composition is equivalent to at least three credit hours. The student is only enrolled in nine hours of regular coursework for the payment period (three-quarter time Pell enrollment status). These three additional credit hours will increase her Pell Grant enrollment status to full-time, and because she has a zero EFC, the result is an increase of $716 that must be released directly to the student.

Finally, upon assessment of the student's composition portfolio, the institution determines that it will apply 18 credit hours toward completion of the student's academic program.

Through this experiment the Department seeks to gain a better understanding of how the inclusion in students' COA of costs incurred for prior learning assessments (PLAs) may be related to credits awarded for knowledge the students already possess and to students' costs, borrowing, and completion. The Department is also interested in learning about: (1) The amounts and types of assessment costs that institutions include in students' COAs; (2) the process by which institutions determine which PLAs to accept for the purposes of awarding credit and the amount of credit to apply to the student's academic program for passing a PLA; and (3) the process institutions used to determine the number of credit hours that were used to adjust students' enrollment status.

An institution applying to participate in this experiment may also apply to participate in the Competency-Based Education or Limited Direct Assessment experiments described in this notice.

Waivers

Institutions selected for this experiment will be exempt from, or will follow waivers to, the following statutory and regulatory provisions:

- HEA section 472, which establishes the types of expenses that may be considered when determining a student's financial need.
- 34 CFR 668.2, to the extent that the definition of a ''full time student'' states that a student's workload must be ''academic'' in nature, precluding the incorporation of time spent preparing to demonstrate prior learning.
- 34 CFR 600.2, to the extent that the definition of ''credit hour'' requires classroom or direct faculty instruction or work for the purpose of achieving learning outcomes, and to the extent that the definition of ''clock hours'' requires a class, lecture, recitation, faculty-supervised laboratory, shop training, or internship.
- 668.10(f), if the program has been approved as a Direct Assessment program, to the extent that the regulation prohibits the use of title IV aid for learning that did not result from instruction provided, or overseen, by the institution, including for tests of learning that are not associated with educational activities overseen by the institution.

All other provisions and regulations of the title IV student assistance programs will remain in effect.

Competency-Based Education-Disbursement to Students Who Are Enrolled in Competency-Based Education Programs

Background

Section 481(a)(2) of the HEA and the regulations at 34 CFR 668.3 provide, in general, that, for purposes of the title IV, HEA programs, an ''academic year'' requires a minimum of 30 weeks of instructional time for a credit hour program and a minimum of 26 weeks of instructional time for a clock-hour program. An academic year for an undergraduate program of study must additionally include at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours, as appropriate. In general, under the individual title IV program regulations, aid is disbursed on a payment period by payment period basis. Under 34 CFR 668.4, for an academic program that does not have academic terms, referred to in the title IV regulations as a ''nonterm program'', a payment period ends, and the next payment period begins, when the student has successfully completed both half the number of clock or credit hours in the program's title IV academic year and half the number of weeks of instructional time in that definition.

Traditional postsecondary programs of study measure a student's academic progress based on (1) number of credit or clock hours completed; and (2) weeks of instructional time that have elapsed. In contrast, competency-based education (CBE) programs measure a student's academic progress by assessing the student's learning, typically on the basis of the student's demonstration of mastery of a defined set of competency standards.

Because advancement in CBE programs is not tied to scheduled time periods, many CBE programs allow students to self-pace their progression through a program. CBE programs also commonly incorporate online and other technology-based teaching and learning tools. As a result, CBE programs may make postsecondary education more accessible, particularly for adult learners and those who are employed while in school, because students have a greater ability to learn on their own time and at a place of their choosing. This flexibility also has the potential to make postsecondary education more affordable by reducing time to degree and reliance on the costly infrastructure of traditional postsecondary institutions and the programs they offer.

Under the current statutory and regulatory requirements for title IV aid disbursement, the student's title IV aid may be disbursed only after the student has completed not only a specific portion of coursework, but also a defined period of calendar time. These time-based restrictions may make it more difficult for institutions to implement CBE programs in which students work at their own pace. Under existing rules, students who are capable of accelerating through their CBE programs (i.e. meeting the competency standards) would experience delays in receiving new disbursements of title IV aid to pay for upcoming institutional charges. Existing regulations also prevent students who may progress more slowly through their CBE programs from receiving additional disbursements of title IV aid to support their living expenses, even though these expenses continue to accrue over time. Removing or modifying some of the time-based regulatory restrictions on disbursement of title IV aid may allow institutions to more effectively implement CBE programs and make it easier for students to progress through these programs at their own pace.

Description

This experiment will provide limited waivers of certain statutory and regulatory requirements to remove some of the time-based restrictions to the disbursement of title IV aid so that funds are available to the student to pay institutional charges as they progress through a program at their own pace.

The experiment would allow for the disbursement of title IV aid for ''direct costs'' (institutional charges permitted as costs of attendance under HEA section 472) as soon as the student completes a required number of competencies, regardless of how many weeks of instructional time have elapsed. Disbursements of title IV aid for ''indirect costs'' (i.e. living expenses) would be made at regular intervals related to the completion of a certain number of weeks of instruction.

The experiment will require the institution to develop clock or credit hour equivalencies for each of the program's required competencies. Both the methodology used by the institution to develop those equivalencies and the results of that methodology must have been approved by the institution's accrediting agency or otherwise meet that agency's requirements for the calculation of credit or clock hour equivalencies.

Institutional Eligibility: To participate in this experiment, an institution must include in the experiment at least one CBE program that has been approved or recognized as such by its accrediting agency. For the purposes of the experiment, a CBE program is an

academic program of study for which at least one academic year is offered solely through competency-based education. CBE programs eligible for this experiment include programs that measure students' progress in credit or clock hours and programs, if approved by the Department, that measure student progression using direct assessment of the student's mastery of a defined set of competencies rather than using credit or clock hours.

To be approved to participate in the experiment, the institution must ensure and document that the program's equivalency methodology, as discussed above, was either approved by the relevant accrediting agency or meets that agency's requirements for such equivalencies. If applicable, it is expected that the institution's delivery of academic content in a competency-based format would have been approved by its accrediting agency as a substantive change, in accordance with the regulations at 34 CFR 602.22. The program must also have been approved for title IV eligibility by the Department, if necessary.

Academic Year: As with any title IV eligible program, the defined academic year for a semester-based or trimester-based CBE program under this experiment must be a minimum of 24 credit hours and a quarter-based program's academic year must be a minimum of 36 credit hours. In all instances, an academic year in a CBE program using credit hour equivalencies must include at least 30 weeks of instructional time. An academic year in a CBE program using clock hour equivalencies must be a minimum of 900 clock hours and must include at least 26 weeks of instructional time.

As described above, this experiment will require the institution to establish clock or credit hour equivalencies for each of the CBE program's required competencies. Those equivalencies will be used to determine the hour component of the CBE program's academic year definition and establish the hour thresholds for the institution's disbursement of title IV aid to cover the student's direct costs. Note that a credit-hour equivalency is simply a way to quantify an amount of learning and an institution is not required to display equivalency or ''map back'' to a particular course or content. There is also no requirement that all of the competencies have the same number of credit hour equivalencies.

For example, an institution and its accrediting agency determine that a particular CBE program consists of 40 competencies, successful completion of which will result in completion of the program. The institution and the accrediting agency also determine that each of those competencies is the equivalent, in terms of effort and learning outcomes, to three semester credit hours. In this example, and assuming a defined title IV academic year of 24 semester credit hours, a student would have completed the hour portion of the title IV academic year after demonstrating mastery of at least eight individual competencies ($8 \times 3 = 24$).

Disbursements for Direct and Indirect Costs: Under this experiment, institutions will separate the components of the student's title IV COA into two categories, one for ''direct costs'' (i.e., tuition and fees and books and supplies) and the other for ''indirect costs'' (such as room and board, transportation, miscellaneous expenses). Students will be eligible to receive disbursements of title IV aid for institutional charges and disbursements of title IV aid for living expenses at different times based on the two different measures of the student's progression through the CBE program.

Subject to the student's maximum award eligibility for the academic year, the institution will be permitted to make a disbursement of title IV aid for direct costs once the student completes the appropriate number of competencies, without regard to how long it took the student to do so.

Disbursements for indirect costs will be made based on the student's completion of a number of weeks of instructional time, since those costs are directly related to the time component of the title IV ''academic year'' definition, and will not require completion of a set number amount of competencies by that time unless the student fails to meet satisfactory academic progress requirements as described below.

Payment Periods: This experiment will require that title IV aid be disbursed to students under the ''non-term'' provisions of the regulations, except that institutions will be required to shorten the length of the CBE program's payment periods from 50 percent of the program's defined ''academic year'' to no more than 25 percent of the academic year. Because aid for direct and indirect costs will be decoupled, there will be two separate title IV payment periods.

A direct cost payment period will be based on the student's completion of no more than 25 percent of the competencies in the program's title IV academic year. An indirect cost payment period will be based on the student's completion of no more than 25 percent of the number of weeks of instructional time in the program's title IV academic year.

This experiment will provide for institutional flexibility in establishing the number of competencies and weeks of instructional time in the CBE program's payment periods to fit its needs, as long as each of those components is not more than 25 percent of the relevant academic year component and as long as all of the components combined equal at least 100 percent of the relevant academic year component. An institution may choose a different percentage for establishing a payment period for direct costs and for indirect costs.

Example: Consider an example in which the institution and its accrediting agency have established that the CBE program consists of 40 competencies, each of which is equivalent to the amount of learning in three semester credit hours. Accordingly, the title IV academic year will consist of successful completion of at least eight competencies (the equivalent of 24 credit hours) over 30 weeks of instructional time. The institution has decided, for this CBE program, that it will set both the direct cost payment period and the indirect cost payment period to be equal to 25 percent of the title IV academic year.

In this example, assume that the student's total title IV aid for the academic year is $16,000, with the direct costs (tuition and fees and books and supplies) totaling $12,000. For this student, the direct cost component of the COA will be $12,000 and the indirect cost component of the COA will be $4,000, the remainder of title IV aid available after consideration of direct costs. These amounts will be used to determine the amount of the disbursements that are made upon the student's completion of the relevant payment period.

Therefore, for this example 25 percent of the direct cost component ($3,000 in this example) could be disbursed at the beginning of the first direct cost payment period in the academic year and three subsequent $3,000 disbursements could be made following the student's successful completion of each direct cost payment period—at least two competencies (25 percent of the eight competencies in the academic year definition). Similarly, 25 percent of the indirect cost component ($1,000 in this example) will be disbursed at the beginning of the first indirect cost payment period in the academic year and three subsequent $1,000 disbursements will be made following the student's successful completion of each of the indirect cost payment periods, each of which constitutes 7.5

weeks of instructional time (25 percent of the 30 weeks of instructional time in the academic year).

Under this experiment, if a student completes 25 percent of the competencies in the academic year before 25 percent of the weeks of instruction has passed, the institution may choose, for administrative reasons, not to immediately disburse title IV aid for direct costs but, may instead wait until the required weeks of instruction have elapsed, in order to make disbursements for both direct and indirect costs at the same time. However, if an institution chooses to delay disbursements for direct costs, it may not restrict the student's ability to continue or to begin subsequent academic work.

Similar to the title IV credit balance disbursement requirements of 34 CFR 668.164(e), the institution must make the disbursement of title IV funds, if any, for a student's indirect costs no later than 14 days after the student has completed the prior indirect cost payment period.

Weeks of Instruction, Educational Activities, and Substantive Interaction: Consistent with existing regulations, for purposes of this experiment, a week of instructional time is any seven-day period in which the institution makes available to the students enrolled in the CBE program, instructional materials and faculty support so that a student could be engaged in an educational activity. Although students must in general show progress in their program of study to continue to receive title IV aid, they will have a limited amount of discretion to determine the pace of their progression, subject to the limits of the withdrawal and satisfactory academic progress provisions discussed below.

Also consistent with existing regulations, for the purpose of this experiment, an educational activity includes, but is not limited to, regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of academic action plans covering the competencies identified by the institution, or, in combination with any of the foregoing, assessments.

For the purpose of this experiment, regular and substantive interaction between students and instructors will be required.

Title IV aid may not be paid for academic credits resulting from successful assessments of prior learning where the learning was not based on instruction provided during the payment period.

Withdrawals and the Return of Title IV Aid (R2T4): Because of the relatively short payment periods in this experiment (no more than 25 percent of the academic year), the institution will not be required to perform a calculation when a student withdraws during a payment period. However, if a student ceases to be academically engaged, or fails to enroll in any competencies, for 45 days, the institution must consider the student to have withdrawn and no further title IV aid may be disbursed.

An institution will still have to comply with regulations for late disbursements under 34 CFR 668.164(g), except insofar as post-withdrawal disbursements will not be calculated in accordance with 34 CFR 668.22. An institution will be required, within 45 days of determining that a student has withdrawn, to notify the student of any loan funds for which the student might be eligible and maintain a process for issuing those funds to the student or the student's account upon request. Likewise, the institution must also pay to the student any grant funds that the student was eligible to receive at the time of the withdrawal, and comply with the requirements in 34 CFR 668.21 to return funds for a payment period in which a student did not begin attendance.

Satisfactory Academic Progress (SAP): This experiment will modify the statutory and regulatory requirements for monitoring a title IV aid recipient's SAP. Under the experiment, an institution will be required to evaluate a student's SAP upon the student's completion of each of the program's academic years, as measured in weeks of instructional time (i.e., at least 30 weeks for a program with credit hour equivalencies and at least 26 weeks for a program with clock hour equivalencies). Because the student must have completed the required number of competencies before title IV aid can be disbursed for direct costs, when performing the SAP evaluation at the end of the academic year, institutions will not be required to determine the student's SAP pace by dividing the number of hours the student has completed by the number of hours the student has attempted. Instead, the institution will determine whether the student has completed sufficient competencies to complete the program within the maximum timeframe, that is no more than 150 percent of the program's published length, as provided in the definition of ''maximum timeframe'' in the regulations at 34 CFR 668.34(b).

For example, consider a student who was enrolled in a CBE program of 40 competencies, each of which has been determined to be the equivalent of three credit hours. The title IV academic year consists of eight competencies, which is equivalent to 24 credit hours, and 30 weeks of instructional time. While the student may have received title IV aid for each of the four indirect cost payment periods (i.e. after 7.5 weeks), if the student has not completed at least 5.33 competencies at the end of the 30th week of instruction in the student's first year of the program the institution would determine that she is not on pace to complete the program within 150% of the maximum timeframe and would terminate her title IV eligibility, subject to the possibility of an appeal.

Additionally, under this experiment, if the institution accepts any transfer credit to meet requirements of a student's program, it may, but is not required to, prorate the student's maximum timeframe based on the amount of transfer credit that the student has received.

Through this experiment the Department seeks to gain a better understanding of how the flexibility in the delivery of title IV student assistance might facilitate the implementation of CBE programs by institutions relate to students' costs, borrowing, and completion.

The Department is also interested in learning how the flexibility provided in the experiment for R2T4 and SAP make it easier for institutions to implement CBE programs, as well as how institutions maintain the integrity of the title IV student aid programs given such flexibility. We also seek to learn how institutions ensure regular and substantive interaction between students and instructors. Additionally, we seek to learn how institutions prohibit the payment of title IV aid for credits resulting from successful assessments of prior learning that were not based on instruction provided during the payment period.

Further, we hope to better understand the process by which institutions develop CBE programs, including the process of obtaining accrediting agency approval for such programs and determining, with their accrediting agencies, the clock or credit hour equivalencies for the defined competencies in their programs.

Note that an institution applying to participate in this experiment may also apply to participate in one or both of the Prior Learning Assessment and the Limited Direct Assessment experiments described in this notice.

Waivers

Institutions selected for this experiment will be exempt from, or will

follow waivers to, the following statutory and regulatory provisions:

• 34 CFR 668.4(c), to the extent that the regulation defines payment periods in nonterm programs to be 50 percent of the title IV academic year and requires completion of both credit or clock hours and weeks of instructional time.

• HEA section 484B and 34 CFR 668.22 which require the institution to determine the amount of title IV aid a student has earned upon withdrawal from the institution, except that this waiver does not apply for the determination of a student's withdrawal date from a nonterm program at 34 CFR 668.22(a)(2) and the requirement for notification of a post-withdrawal disbursement for funds from the Direct Loan Program at 34 CFR 668.22(a)(6).

• HEA section 484(c) and 34 CFR 668.34(a)(3)(ii), (a)(5)(ii), and (b), related to the timeframe when the institution must determine whether a student is making satisfactory progress and to the method by which an institution must calculate the pace of a student's academic progression.

• 34 CFR 674.16(b)(3), which permits an institution to advance Federal Perkins Loan funds within each payment period at such time and in such amounts as it determines best meets a student's needs. The modification will require the institution to make disbursements of Perkins Loan funds for indirect costs in accordance with the provisions of the experiment.

• 34 CFR 676.16(a)(3), which permits an institution to advance Federal Supplemental Educational Opportunity Grant funds within each payment period at such time and in such amounts as it determines best meets a student's needs. The waiver will require the institution to make disbursements of FSEOG funds for indirect costs in accordance with the provisions of the experiment.

• HEA section 428G(a)(2) and 34 CFR 685.301(b)(3)(ii)(B), which provide that an institution may not make the second disbursement of a Direct Loan until the student successfully completes half of the number of credit or clock hours and half the number of weeks of instructional time in a payment period.

• 34 CFR 685.301(c)(2) and (3), to the extent that the regulations provide that students in nonterm programs are considered to have completed their academic year and progressed to the next annual loan limit at the later of the successful completion of weeks of instructional time or the coursework or clock hours in the student's academic year.

• 34 CFR 686.33(a), which permits an institution to pay TEACH Grant funds within each payment period at such time and in such amounts as it determines best meets a student's needs. The modification will require the institution to make disbursements of TEACH Grant funds for indirect costs in accordance with the provisions of the experiment, as explained above.

• 34 CFR 690.63(e)(2), which requires Pell Grant funds (and Iraq-Afghanistan Service Grant funds) to be paid in nonterm programs only when both the credit or clock hours and weeks of instructional time associated with the prior payment period have been completed.

• 34 CFR 690.76(a), which permits an institution to pay Pell Grant funds (and Iraq-Afghanistan Service Grant funds) within each payment period at such time and in such amounts as it determines best meets a student's needs. The modification will require the institution to make disbursements of Pell Grant funds or Iraq-Afghanistan Service Grant funds in accordance with the provisions of the experiment.

All other provisions and regulations of the title IV student assistance programs will remain in effect.

Limited Direct Assessment—Eligibility of Coursework Using Direct Assessment

Background

Section 481(b)(4) of the HEA and the regulations at 34 CFR 668.10 provide, in general, that the definition of an ''academic program'' eligible for title IV aid includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. To be eligible for title IV aid, such programs must utilize direct assessment over the entire program, and may not offer a combination of coursework offered using direct assessment and coursework offered in traditional credit hours or clock hours. Institutions are also prohibited from offering title IV aid for remedial coursework using direct assessment.

Several in the postsecondary education community believe that additional statutory and regulatory flexibility related to direct assessment requirements would provide opportunities for new approaches for teaching and instruction. They also contend that direct assessment may be more appropriate for some portions of a program than other portions, and restricting eligibility to only programs where all coursework is offered using direct assessment may limit the effectiveness of direct assessment.

Further, some institutions and other entities have also stated that not allowing remedial coursework to be offered using direct assessment is restrictive and unnecessary, particularly for nontraditional students who may be able to master skills to prepare them for more advanced coursework, but have difficulty doing so in a traditional term-based program.

Description

This experiment will permit an institution to provide title IV aid to students who are enrolled in a program that measures students' academic progress using a direct assessment method, even if the entire program does not use direct assessment. The experiment will permit an institution to provide in a single program both direct assessment courses and credit or clock hour courses. Students may enroll in both types of courses simultaneously or at different times within the same program, academic year, or payment period.

An institution applying to participate in this experiment may also apply to participate in the Prior Learning Assessment experiment, which will allow the institution to include certain costs incurred by a student for assessments of prior learning in the student's title IV COA. Institutions applying to participate in this experiment are also encouraged to apply to participate in the related Competency-Based Education Program experiment.

Through this experiment, the Department seeks to examine institutions' implementation of approaches that utilize direct assessment over only part of a program or involve the use of remedial coursework offered using direct assessment. The Department is also interested in understanding how those approaches may be related to students' costs, borrowing, and completion.

Waivers

Institutions selected for this experiment will be exempt from the following statutory and regulatory provisions:

• HEA section 481(b)(4) and 34 CFR 668.10(a)(1), which require a program utilizing direct assessment to use direct assessment for the entire program.

• 34 CFR 668.10(a)(3)(iii), to the extent that the regulation defines the activities that may be considered educational activities for the purposes of defining a week of instructional time in a direct assessment program.

• 34 CFR 668.10(g)(2), which prohibits the payment of title IV aid for

remedial coursework offered by direct assessment.

All other provisions of the title IV student assistance regulations, including the requirement that the institution apply for approval for direct assessment program eligibility under 34 CFR 668.10(b), will remain in effect.

Federal Work Study—Near-Peer Counseling

Background

Section 443(b)(5) of the HEA provides that, except under limited circumstances, the Federal share of compensation paid to students employed under the Federal Work-Study (FWS) Program may not exceed 75 percent. The remaining portion must come from institutional or other non-Federal funds.

This experiment provides financial encouragement to institutions to develop, implement, or expand FWS placements that provide ''near-peer counseling'' to high-school students, especially at-risk and underrepresented students. This experiment reflects emerging evidence that counseling provided by college students similar in age and circumstances to the high school students they counsel is effective in raising rates of college enrollment.

Under this experiment, the regular ''matching'' share of FWS compensation will be reduced or eliminated, allowing institutions to use up to 100 percent of Federal funds to provide compensation to its FWS near-peer counselors.

Description

This experiment will waive the statutory and regulatory requirements that prohibit the Federal share of compensation paid to a student under the FWS Program from exceeding 75 percent for near-peer counselors and mentors employed by the institution. For the purpose of this experiment, near-peer counselors or mentors are any of an institution's students whose FWS-funded jobs are to provide counseling or mentoring to high school students in matters of college readiness, student aid, career counseling, or financial literacy.

Under this experiment, an institution must ensure that its near-peer counselors or mentors are knowledgeable in the aforementioned subjects, are either experienced in or trained in relevant counseling or mentoring techniques, and that the activities, information, and initiatives under the near-peer counseling or mentoring program are targeted to the needs of high school students. Institutions must also ensure that their FWS near-peer counselors or mentors are not involved in any institutional marketing or recruitment activities, particularly for the institution itself.

Through this experiment, the Department hopes to gain a better understanding of how FWS programs offered by institutions may change after the FWS matching requirement for near-peer counseling is waived, including potential changes in the number or characteristics of FWS-supported students overall and of those who participate in near-peer counseling programs. The Department is also interested in learning about the level of student participation in FWS programs at institutions and characteristics of institutions' FWS students, especially those employed in community service jobs and those who participate in near-peer mentoring programs.

Waivers

Institutions selected for this experiment will be exempt from the following statutory and regulatory provisions:

- HEA section 443(b)(5) and the regulations at 34 CFR 675.26 (a), which generally provide that the Federal share of compensation paid to an FWS student may not exceed 75 percent.

All other provisions and regulations of the title IV student assistance programs and specifically regarding the FWS program will remain in effect.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g. braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: HEA, section 487A(b); 20 U.S.C. 1094a(b).

Dated: July 25, 2014.

Lynn Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–18075 Filed 7–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2014–OCTAE–0106]

Performance Partnership Pilots for Disconnected Youth

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Request for public comment.

SUMMARY: The Secretary invites written comments on the implementation of Performance Partnership Pilots for Disconnected Youth, which will offer a unique opportunity for States, localities, and tribes to test innovative, cost-effective, and outcome-focused strategies for improving results for disconnected youth. Working with other Federal agencies, the U.S. Department of Education (Department) will solicit applications for these pilots. Through this notice, the Department seeks input on the application process that we intend to use.

DATES: We must receive your comments by August 7, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term ''Performance Partnership Pilots'' at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned or read-only format.* Using a print-to-PDF format allows the Department of Education (Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* To submit your comments electronically, go to *www.regulations.gov*. Information on using Regulations.gov, including instructions for accessing agency

documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''

• *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Braden Goetz, U.S. Department of Education, 550 12th Street SW., Room 11141, Potomac Center Plaza (PCP), Washington, DC 20202. Please note that mail sent through the U.S. Mail is subject to X-ray or heat treatment, which typically results in delays and may damage paper products.

Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Braden Goetz, U.S. Department of Education, 550 12th Street SW., Room 11141, PCP, Washington, DC 20202. Telephone: (202) 245–7405 or by email at: *Braden.Goetz@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Performance Partnership Pilots for Disconnected Youth (P3) offer a unique opportunity to test innovative, cost-effective, and outcome-focused strategies for improving results for disconnected youth. Through these pilots, we hope to learn more about whether providing additional flexibility for States, localities, and Indian tribes to pool funds and waive programmatic requirements will help them overcome some of the significant hurdles they may face in improving outcomes for disconnected youth.

The Consolidated Appropriations Act, 2014 (Pub. L. 113–76) (the Act), under Section 526 of Division H, authorizes the Departments of Education, Labor, and Health and Human Services, along with the Corporation for National and Community Service and the Institute of Museum and Library Services (collectively, the Agencies), to enter into a total of up to ten Performance Partnership Agreements with States, localities, or tribal governments receiving funds under multiple Federal programs that give grantees additional flexibility in using these funds to achieve significant improvement in outcomes for disconnected youth. In the Act, '' 'to improve outcomes for disconnected youth' means to increase the rate at which individuals between the ages of 14 and 24 (who are low-income and either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in or at-risk of dropping out of an educational institution) achieve success in meeting educational, employment, or other key goals.'' (Section 526(a)(2) of Division H of the Act). We describe significant elements of these pilots in the following paragraphs.

Blending Funds

The P3 pilots are designed to facilitate flexible use of existing Federal funding streams that were made available under the Act. The theory of action behind P3 is that blending funds should reduce administrative burdens, and thereby enhance pilot sites' capability to effectively use resources from multiple Federal, State, tribal, local, and philanthropic funding streams, such as by enabling pilot sites to better align project objectives, delivery of services, measurement strategies, and reporting.

The pilots must involve Federal programs focused on serving disconnected youth or designed to prevent youth from disconnecting from school or work, and that provide education, training, employment, and other related services. Thus, under the Act, States, localities, and tribes that enter into a P3 agreement may blend fiscal year (FY) 2014 discretionary funds, including both formula and competitive grant funds, from the Agencies in order to implement outcome-focused strategies for serving disconnected youth. This blending of funds, including individual funding streams, or portions of them, will be accomplished under a partnership agreement that will provide for a single set of reporting and other requirements to govern the pilot. This single set of requirements may differ from the various requirements associated with each of the original, individual funding streams.

Before any of the Agencies can participate in a Performance Partnership Pilot, the agency head must determine, in writing, that the agency's participation in the pilot (1) will not result in denying or restricting the eligibility of any individual for any of the services that (in whole or in part) are supported by the agency's programs and Federal discretionary funds that are involved in the Pilot, and (2) based on the best available information, will not otherwise adversely affect vulnerable populations that receive those services.

The Agencies have identified flexible FY 2014 funds under existing authorities that the Department will award as start-up grants. These grants, which will likely be several hundred thousand dollars each, will help to support each pilot's start-up costs, such as activities related to planning, governance, and coordination. Applicants will describe in their proposals how they will use these funds, along with the funds the applicants propose to blend under the Performance Partnerships authority, to develop and implement high-quality Performance Partnership Pilots to improve outcomes for disconnected youth.

Waivers

In order to provide applicants with the flexibility required to implement a pilot through the effective blending of Federal and non-Federal funds, the Act provides that the Agencies may waive requirements associated with individual programs contributing funds. P3 authority states that heads of the Agencies may not only exercise any existing waiver authority, but also waive any statutory, regulatory, or administrative requirement that they are otherwise not authorized to waive, so long as the waiver is in keeping with important safeguards. Specifically, waivers must be consistent with the statutory purposes of the respective Federal programs contributing funds to the pilot and necessary to achieve the pilot's outcomes. In addition, the Agencies may not waive requirements related to nondiscrimination, wage and labor standards, and allocation of funds to State and substate levels.

In practice, P3 waiver authority should enable applicants to take a more outcome-focused approach to providing services by: First, identifying the population to be served; second, determining the most effective strategies for serving that population; third, selecting funding streams appropriate to support those strategies; and, lastly, clarifying which program rules and requirements would need to be waived in order to implement the strategies. The waiver authority will allow communities and the Federal government to identify eligible youth and design the allowable activities and reporting requirements so that they support the locally determined goals and objectives of the pilot.

Performance Partnership Agreements

Each pilot will be governed by a performance agreement between a lead

Federal agency, which will be designated by the Office of Management and Budget and will act on behalf of the Agencies, and the respective representatives of all of the State, local, or tribal governments participating in the pilot.

Limitations

The Act does not provide authority for pilots to blend funding or waive provisions of Federal programs funded with mandatory appropriations (such as Temporary Assistance for Needy Families or Medicaid). However, the performance agreements must identify any statutory, regulatory, or administrative requirements related to programs funded with mandatory appropriations that pilot sites determine would be barriers to achieving the pilot's outcomes. Pilots also do not extend to programs funded outside of the Act, such as those administered by the Department of Justice and the Department of Housing and Urban Development. However, pilot jurisdictions may seek waivers or administrative flexibility already authorized under programs administered by these other agencies in order to improve their coordination and alignment with the pilot project.

Request for Public Comment

The Agencies consider public input critical to the effective implementation of the P3 authority. In June 2012, the Department published a Request for Information on Disconnected Youth in the **Federal Register** (77 FR 32959) (RFI) seeking public input regarding the implementation of the authority, which was first proposed by the Administration in the FY 2013 budget request.[1] The 171 comments the Department received in response to the RFI emphasized the need for greater flexibility, highlighted promising initiatives, and offered recommendations for effectively serving disconnected youth and administering P3. The responses helped inform our thinking about how best to implement this new authority.

On April 28, 2014, the Agencies issued a consultation paper, *Changing the Odds for Disconnected Youth: Initial Design Considerations for Performance Partnership Pilots,* that provides background information about the pilot authority and describes the Agencies' initial thinking about the implementation of the authority.[2] The paper also encouraged stakeholders to respond by email to key questions about implementing P3 pilots. The Agencies also used their research and analysis for the paper to guide two national webinars on April 21 and 30, 2014 that provided information to the field and solicited feedback about the implementation of the authority.[3]

The consultation paper indicated that the Agencies were considering a two-step application process that would first seek brief preliminary applications and then invite full proposals from the strongest candidates. Since the publication of the consultation paper, the Agencies have decided instead to require applicants to submit one full proposal through a single-step process. This change will enable applicants to have more time to prepare their proposals.

Later this summer, the Department, acting on behalf of the Agencies, expects to publish a notice inviting applications. While under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements for a grant competition, the Department plans to waive rulemaking requirements for this new program, pursuant to its authority in section 437(d)(1) of the General Education Provisions Act (GEPA). Section 437(d)(1) of GEPA allows the Secretary to exempt from rulemaking requirements and regulations governing the first grant competition under a new or substantially revised program authority. Because this is the first grant competition for the Performance Partnership Pilots, it qualifies for this exemption. Therefore, in order to expedite the selection of the entities that will be awarded P3 authority and start-up grant funding, the Department plans to forego public comment on the priorities, definitions, and requirements that will apply to the P3 competition.

However, through this notice, we are seeking additional public input on the application process for P3. The Agencies will consider all relevant comments when finalizing the P3 application process and competition design.

Note: This request for public comment is for information and planning purposes only and should not be construed as a solicitation for applications or as an obligation on the part of the Agencies.

We are particularly interested in responses to the following questions:

1. What information, in addition to the information required by the Act, should entities be required to submit in their applications?

2. What criteria should the Agencies use to evaluate applications?

3. What technical assistance would be helpful to entities in preparing their applications?

Note: The consultation paper includes additional background information about P3 and the Agencies' initial thinking about its implementation that may be helpful in considering these questions.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Authority: Section 526, Division H of P.L. 113–76.

Dated: July 28, 2014.

Johan E. Uvin,

Acting Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2014–18077 Filed 7–30–14; 8:45 am]

BILLING CODE 4000–01–P

[1] The Request for Information on Disconnected Youth can be found at *www.gpo.gov/fdsys/granule/FR-2012-06-04/2012-13473.*

[2] This consultation paper, Answers to Frequently Asked Questions, and other information about the Performance Partnership Pilots authority can be found at *www.findyouthinfo.gov/youth-topics/reconnecting-youth/performance-partnership-pilots.*

[3] Recordings of the webinars can be found at *http://www.findyouthinfo.gov/youth-topics/reconnecting-youth/performance-partnership-pilots/webcast.*

DEPARTMENT OF ENERGY

[FE Docket No. 13–161–LNG]

Gasfin Development USA, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on December 24, 2013, by Gasfin Development USA, LLC (Gasfin), requesting long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 74 billion cubic feet per year (Bcf/yr) of natural gas, or 0.2 Bcf per day (Bcf/d). Gasfin seeks authorization to export the LNG by vessel from the proposed Gasfin LNG Export Project, a mid-scale natural gas liquefaction and LNG export terminal to be located along the Calcasieu River in Cameron Parish, Louisiana (the Project), for a 20-year term commencing on the earlier of the date of first export or eight years from the date the authorization is granted. Gasfin requests authorization to export the LNG by vessel to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries), and with which trade is not prohibited by U.S. law or policy. Gasfin requests this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3(a) of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 29, 2014.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

Background

Applicant. Gasfin states that it is a Delaware limited liability company with its principal place of business in Strassen, Luxembourg. Gasfin is a wholly owned subsidiary of Gasfin Development S.A. (Gasfin Development), a Luxembourg company that develops, owns and manages mid-scale LNG infrastructure.

According to Gasfin, Gasfin Development is management controlled by Roland Fisher (CEO) and Vladimir Puklavec (Chairman). Gasfin Development's affiliated operating group companies are TGE Gas Engineering GmbH (TGE Gas) and TGE Marine Gas Engineering GmbH (TGE Marine)—both limited companies set up in Bonn, Germany. Gasfin Development management holds 40 percent of the share capital of TGE Gas and TGE Marine. China International Marine Containers (Group) Co., Ltd., a publicly traded Chinese manufacturing group listed on the Shenzhen Stock Exchange, is a 60 percent shareholder of TGE Gas. Caledonia Investments plc, a publicly traded UK Investment Trust listed on the London Stock Exchange, is a 60 percent shareholder of TGE Marine.

Procedural History. On March 7, 2013, DOE/FE issued Order No. 3253, in which it authorized Gasfin to export LNG produced from domestic sources to FTA countries (*i.e.,* countries with which the United States currently has, or in the future will have, a free trade agreement requiring national treatment for trade in natural gas) [1] in a volume equivalent to approximately 74 Bcf/yr of natural gas (0.2 Bcf/d), or 1.5 million metric tons per annum (mtpa) of LNG.[2] This is the same volume of LNG requested for exported to non-FTA countries in the current Application.

Liquefaction Project. Gasfin seeks long-term authorization to export domestically produced LNG from the Gasfin LNG Export Project, which Gasfin proposes to construct, own, and operate. Gasfin states that the Project will be located on a 65-acre site along the Calcasieu River in Cameron Parish, Louisiana. Gasfin states that construction of the Project will occur in three phases, with each phase capable of producing 0.5 mtpa of LNG (approximately 67.5 million standard cubic feet per day of natural gas) for a total of 1.5 mtpa. Gasfin anticipates that the Project will have LNG storage capacity ranging from 80,000 cubic meters (m^3) to 200,000 m^3, to be completed as single or multiple tanks depending on Project phasing.

Gasfin states that it will construct a single berth to accommodate mid-scale LNG carriers ranging in size from 10,000 m^3 to 174,000 m^3. The Project also will include a pipeline (approximately 3 to 11 miles long) to link the Project to the existing gas pipeline network, as well as common facilities including control and administration buildings, utilities, and a flare.

Current Application

Gasfin requests long-term, multi-contract authorization to export LNG in a volume equivalent to approximately 74 Bcf/yr of domestic natural gas (0.2 Bcf/d) by vessel from the proposed Gasfin LNG Export Project to any non-FTA country which has developed or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. Gasfin requests this authorization for a 20-year term commencing on the earlier of the date of first export or eight years from the date the requested authorization is granted.

Gasfin seeks to export the requested LNG on its own behalf and as agent for

[1] The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

[2] *Gasfin Development USA, LLC,* DOE/FE Order. No. 3253, Docket No. 13–06–LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Gasfin LNG Export Project in Cameron Parish, Louisiana, to Free Trade Agreement Nations (March 7, 2013).

third parties who hold title to the LNG at the time of export. Gasfin states that it will comply with all DOE/FE requirements for exporters and agents as set forth in recent DOE/FE orders, including registering each LNG title holder for whom Gasfin seeks to export as agent. Gasfin states that this registration will include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in Gasfin's export authorization. Gasfin further states that it will include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition, Gasfin states that it will file under seal with DOE/FE any relevant long-term commercial agreements between Gasfin and the LNG title holder, once those agreements have been executed.

Gasfin states that the proposed Project site is located in close proximity to various major interstate and intrastate pipeline systems, including those of Tennessee Gas Pipeline Company, ANR Pipeline Company, Bridgeline Holdings, L.P., Columbia Gulf Transmission Company, and Natural Gas Pipeline Company of America. According to Gasfin, specific interconnections with these neighboring pipelines will be driven by customer demand for delivery and receipt points.

Gasfin states that the planned construction of a short pipeline (approximately 3 to 11 miles long), to be built either by Gasfin or a third-party pipeline company, will allow the Project to interconnect with major pipeline systems that span large regions of the United States and cross multiple conventional and unconventional gas plays. As a result, Gasfin asserts that the Project will be able to source gas from almost any point on the U.S. natural gas pipeline grid through direct physical delivery, by displacement on the spot market, or pursuant to long-term supply arrangements.

Gasfin states that it has not yet entered into long-term supply and long-term LNG purchase and sale or export agreements, but it is engaged in commercial discussions with various potential regional and international large industrial customers. Gasfin further states that it has commenced negotiations with the neighboring pipelines for transportation capacity, interconnection points, and the development of the planned pipeline. According to Gasfin, it will finalize these arrangements once commercial discussions progress with potential customers. Gasfin states that it will submit transaction-specific information to DOE/FE when such contracts are executed.

Public Interest Considerations

Gasfin contends that publicly available information demonstrates that the United States has significant natural gas resources to meet projected future domestic needs, including the quantities requested for export to non-FTA countries in the current Application. Gasfin maintains that it is evident from the current supply/demand balance of natural gas in the United States that its requested authorization will not impinge on any national or regional need for the gas. In support of the Application, Gasfin addresses the following:

Domestic Natural Gas Supply. Gasfin contends that the U.S. Energy Information Administration's (EIA) *Annual Outlook 2013* (AEO 2013) supports the view that the U.S. natural gas resource base continues to expand rapidly. Gasfin highlights AEO 2013 projections that U.S. dry natural gas production will total 33.14 trillion cubic feet (Tcf) (90.8 Bcf/d) by 2040, an increase of 10.14 Tcf (27.8 Bcf/d), or 44.1%, from production levels of 23.0 Tcf (63.0 Bcf/d) in 2011. Gasfin also notes EIA's short-term forecast, which projects domestic marketed production to increase from 69.2 Bcf/d in 2012 to 70.4 Bcf/d in 2013, marking a third record-breaking year in a row. Pointing to EIA's 2014 projections, Gasfin asserts that this trend is expected to continue.

Gasfin next points to recent industry evaluations that, according to Gasfin, reflect a robust outlook for increased domestic natural gas supply capacity. As one example, Gasfin highlights a natural gas resource assessment prepared by the Potential Gas Committee of the Colorado School of Mines (Potential Gas Committee) in April 2013. Gasfin states that the Potential Gas Committee raised its prior estimates of the U.S. technically recoverable gas resource base by 486 Tcf, or 25.6%, to 2,384 Tcf at year-end 2012, the highest resource evaluation in the group's 48-year history.

Gasfin concludes that the Potential Gas Committee resource assessment, AEO 2013, and other publicly available information demonstrate that the United States has sufficient natural gas resources available at modest prices to meet projected domestic demand over the next 25 years.

Domestic Natural Gas Demand. Citing the AEO 2013 Reference Case, Gasfin states that the domestic natural gas market is projected to grow at a 0.7% annual rate through 2040, with demand projected to expand to 29.54 Tcf of natural gas (80.9 Bcf/d) in 2040 from 24.37 Tcf (66.7 Bcf/d) in 2011.

Supply-Demand Balance. Gasfin contends that recent trends in the U.S. natural gas market demonstrate that there is little, if any, domestic need for the natural gas that would be exported as a result of its requested authorization. Citing EIA data, Gasfin asserts that U.S. natural gas production has been growing at almost twice the rate of domestic demand growth since 2005. According to Gasfin, this trend demonstrates that available natural gas reserves exceed current demand, and that future resources exist well in excess of projected long-term domestic needs. Gasfin notes that the AEO 2013 Reference Case projects that domestic natural gas production is expected to exceed domestic consumption by 3.6 Tcf (9.86 Bcf/d) by 2040. Gasfin reiterates that this surplus of deliverable supply demonstrates that resources are available for export and would not interfere with the public interest.

Price Impacts. Gasfin maintains that EIA data and other publicly-available information demonstrate that the United States has sufficient natural gas resources available at modest prices to meet projected domestic demand over the export period requested by Gasfin in the Application. To support this point, Gasfin discusses two studies: (i) The NERA Study, which concluded that the largest price impacts after five years of LNG export growth would range from $0.22 to $1.11 per Mcf, and that exports of LNG will provide a net economic benefit to the United States, regardless of the amount of LNG that is exported; and (ii) the ICF State-Level Study, which projected net gross domestic product gains in natural gas producing states ranging from $10 to $31 billion and up to $2.6 billion to $5 billion for non-natural gas producing states by 2035, as well as net jobs gains nationwide in 2035.

Based on these factors, Gasfin maintains that the proposed exports are not inconsistent with the public interest. Additional details can be found in Gasfin's Application, which is posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/13_161_lngnfta.pdf.*

Environmental Impact

Gasfin states that the potential environmental impact of the Project will be reviewed by the Federal Energy Regulatory Commission (FERC). Gasfin further states that FERC will conduct that review in conjunction with Gasfin's request to site, construct, and operate the Project under section (3) of the NGA.

Gasfin states that, consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* FERC will act as the lead agency for the environmental review, with DOE acting as a cooperating agency. Gasfin anticipates requesting authorization to commence FERC's mandatory NEPA pre-filing review process for the Project once the commercial discussions with potential customers and project partners have progressed.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade, and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–161–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–161–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on July 25, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2014–18030 Filed 7–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Meeting: Correction

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting: Correction.

SUMMARY: The Department of Energy (DOE) published in the **Federal Register** on July 18, 2014, a notice of an open meeting for the Secretary of Energy Advisory Board (SEAB). The notice is being corrected to change the Agenda topics and point of contact for the meeting.

Correction: In the **Federal Register** of July 18, 2014, in FR DOC. 2014—16910, on pages 42001, please make the following corrections:

In the **FOR FURTHER INFORMATION CONTACT** heading, first column, first paragraph, first line, please remove, ''Karen Gibson, Designated Federal Officer'' ''telephone: (202) 586–3787'' and in its place add ''Corey Williams-Allen, Deputy Designated Federal Officer'' ''telephone: (202) 586–1916''.

In the Tentative Agenda heading, first column, first paragraph, fourth line,

please remove, ''SEAB Next Generation High Performance Computing Task Force'' and in its place add, ''SEAB Task Force on Nuclear Nonproliferation''.

In the Public Participation heading, second column, first paragraph, second line, please remove, ''Karen Gibson'' and in its place add, ''Corey Williams-Allen''. Also in the fifth line, remove ''five days'', and in its place add'' one day''.

In the Minutes heading, second column, first paragraph, second line, please remove ''Ms. Gibson. She'', and in its place add, ''Mr. Williams-Allen. He''.

Issued in Washington, DC, on: July 28, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–18034 Filed 7–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Quadrennial Energy Review: Notice of Public Meeting

AGENCY: Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER Task Force) will convene a public meeting to discuss and receive comments on issues related to the Quadrennial Energy Review.

DATES: A public meeting will be held on August 8, 2014, beginning at 11:00 a.m. Central Time in Bismarck, North Dakota. Written comments are welcome, especially following the public meeting, and should be submitted within 60 days of the meeting.

ADDRESSES: The meeting will be held at: Bismarck State College, National Energy Center of Excellence, Bavendick Stateroom (No. 415), 1200 Schafer Street, Bismarck, North Dakota 58506.

You may submit written comments to: *QERComments@hq.doe.gov* or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA–60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121.

For the August 8 public meeting in Bismarck, North Dakota, please title your comment ''Quadrennial Energy Review: Comment on the Public Meeting Bakken Infrastructure Constraints.''

FOR FURTHER INFORMATION CONTACT: Ms. Adonica Renee Pickett, EPSA–90, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9168, *Email: Adonica.Pickett@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2014, President Obama issued a *Presidential Memorandum—Establishing a Quadrennial Energy Review.* To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review Report, policy analysis and modeling, and stakeholder engagement.

The DOE, as the Secretariat for the Quadrennial Energy Review Task Force, will hold a series of public meetings to discuss and receive comments on issues related to the Quadrennial Energy Review.

The initial focus for the Quadrennial Energy Review will be our Nation's infrastructure for transporting, transmitting, storing and delivering energy. Our current infrastructure is increasingly challenged by transformations in energy supply, markets, and patterns of end use; issues of aging and capacity; impacts of climate change; and cyber and physical threats. Any vulnerability in this infrastructure may be exacerbated by the increasing interdependencies of energy systems with water, telecommunications, transportation, and emergency response systems. The first Quadrennial Energy Review Report will serve as a roadmap to help address these challenges.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of the private sector is necessary to develop and implement effective policies. State and local policies; the views of nongovernmental, environmental, faith-based, labor, and other social organizations; and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective energy policies.

An interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies (agencies), will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

August 8, 2014 Public Meeting: Bakken Infrastructure Constraints

On August 8, 2014, the DOE will hold a public meeting in Bismarck, North Dakota. The August 8, 2014 public meeting will feature facilitated panel discussions, followed by an open microphone session. Persons desiring to speak during the open microphone session at the public meeting should come prepared to speak for no more than five minutes and will be accommodated on a first-come, first-serve basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, on the morning of the meeting.

In advance of the meeting, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: *http://energy.gov.*

Submitting comments via email. Submitting comments by email to the QER email address will require you to provide your name and contact information in the transmittal email. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to the QER email address (*QERcomments@hq.doe.gov*) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted to the QER email address cannot be claimed as CBI. Comments received through the email address will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section, below.

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to *10 CFR 1004.11,* any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Confidential information should be submitted to the Confidential QER email address: *QERConfidential@hq.doe.gov.*

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on: July 28, 2014.

Michele Torrusio,

QER Secretariat, QER Interagency Task Force, U.S. Department of Energy.

[FR Doc. 2014–18035 Filed 7–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–11–000]

Commission Information Collection Activities (FERC–516A); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (79 FR 21745, 4/17/2014) requesting public comments. The Commission received no comments on the FERC–516A and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 2, 2014.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0203, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. IC14–11–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures.

OMB Control No.: 1902–0203.

Type of Request: Three-year extension of the information collection requirements for FERC–516A with no changes to the current reporting requirements.

Abstract: Under Sections 205 and 206 of the Federal Power Act (FPA) [1] the Commission is charged with ensuring just and reasonable electric transmission rates and charges as well as ensuring that jurisdictional providers do not

[1] 16 U.S.C. 824d and 824e.

subject any person to any undue prejudice or disadvantage.

The lack of consistent and readily accessible terms and conditions for connecting resources to the grid led to a large number of disputes between jurisdictional transmission providers and small generators [2] in the late 1990s and early 2000s. In response, the Commission directed transmission providers to include Commission-approved, standard, pro-forma interconnection procedures (small generator interconnection procedures or SGIP) and a single uniformly applicable interconnection agreement (small generator interconnection agreement or SGIA) in their open-access transmission tariffs (OATTs). The requirement to create and file these documents was instituted August 2005 by Commission Order No. 2006 [3] and is codified in 18 CFR 35.28(f). This requirement set and maintained a standard in OATTs for consistent consideration and processing of interconnection requests by transmission providers.

Since the issuance of Order No. 2006, many aspects of the energy industry have changed including increased numbers of small generator interconnection requests [4] and the growth in solar photovoltaic (PV) installations. These changes have been driven, in part, by state renewable energy goals and policies. For example, approximately 3,300 MW of grid-connected PV capacity were installed in the U.S. in 2012 [5] compared to 79 MW in 2005, the year Order No. 2006 was issued.[6]

In February 2012, pursuant to Sections 205 and 206 of the FPA and Rule 207 of the Commission's Rules of Practice and Procedures,[7] and noting that the Commission encouraged stakeholders to submit proposed revisions to the regulations set forth in Order No. 2006,[8] the Solar Energy Industries Association (SEIA) filed a Petition to Initiate Rulemaking (Petition). The Petition requested the Commission revise the *pro forma* SGIA and SGIP set forth in Order No. 2006

In 2012 the Commission issued a Notice of Petition for Rulemaking in Docket No. RM12–10–000 seeking comments on the Petition and held a technical conference to discuss issues related to the Petition.

In January 2013, the Commission issued a notice of proposed rulemaking that included proposed revisions to the *pro forma* SGIP and *pro forma* SGIA. In November 2013, the Commission issued Order No. 792 revising the *pro forma* SGIP and *pro forma* SGIA.

Order No. 792: (1) Provided an interconnection customer with the option of requesting from the transmission provider a pre-application report providing existing information about system conditions at a possible point of interconnection; (2) revised the 2 MW threshold for participation in the Fast Track Process included in section 2 of the *pro forma* SGIP; (3) revised the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the interconnection customer and includes minimum load and other screens to determine if a small generating facility may be interconnected safely and reliably; (4) revised the *pro forma* SGIP Facilities Study Agreement to allow the interconnection customer the opportunity to provide written comments to the transmission provider on the upgrades required for interconnection; (5) revised the *pro forma* SGIP and the *pro forma* SGIA to specifically include energy storage devices; and (6) clarified certain sections of the *pro forma* SGIP and the *pro forma* SGIA.

With these modifications, the Commission concluded that the package of reforms adopted in Order No. 792 will reduce the time and cost to process small generator interconnection requests for interconnection customers and transmission providers, maintain reliability, increase energy supply, and remove barriers to the development of new energy resources.

Type of Respondents: Jurisdictional transmission service providers.

Estimate of Annual Burden: [9] Based on filings received in 2013 and the increased burden from Order No. 792, the Commission estimates the total Public Reporting Burden for this information collection as:

FERC–516A (STANDARDIZATION OF SMALL GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES)

Requirements [10]	Number of respondents annually (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden & cost per response [11] (4)	Total annual burden hours & total annual cost (3) × (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Maintenance of Documents—Transmission Providers	46	1	46	1 $75	46 $3,450	$75
Filing of Agreements—Transmission Providers	95	1	95	25 $1,818.25	2,375 $172,733.75	1,818.25
Pre-Application Report—Interconnection Customers [12]	800	1	800	1 $72.73	800 $58,184	72.73

[2] ''Small generators'' are generating facilities having a capacity of no more than 20 megawatts (MW).

[3] Standardization of Small Generation Interconnection Agreements and Procedures, Order No. 2006, 70 FR 34189 (May 12, 2005), FERC Stats. & Regs. ¶31,180 (2005).

[4] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223, at P 3 (2010) (stating that an increasing volume of small generator interconnection requests had created inefficiencies); *Pacific Gas & Elec. Co.,* 135 FERC ¶ 61,094, at P 4 (2011) (stating that increased small generator Interconnection Requests resulted in a backlog of 170 requests over three years); *PJM Interconnection, LLC,* 139 FERC ¶ 61,079, at P 12 (2012) (stating that smaller projects comprised 66 percent of recent queue volume).

[5] Sherwood, Larry, U.S. Solar Market Trends 2012 at 4, *available at http://www.irecusa.org/wp-content/uploads/2013/07/Solar-Report-Final-July-2013-1.pdf.*

[6] U.S. Solar Market Insight Report, 2012 Year in Review, Executive Summary Table 2.1, *available at http://www.seia.org/research-resources/us-solar-market-insight-2012-year-in-review.*

[7] 18 CFR 385.207 (2012).

[8] SEIA Petition at 4 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 118).

[9] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–516A (STANDARDIZATION OF SMALL GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES)—Continued

Requirements [10]	Number of respondents annually (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden & cost per response [11] (4)	Total annual burden hours & total annual cost (3) × (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Pre-Application Report—Transmission Providers	142	5.63	800	2.5 $181.83	2,000 $145,460	1,024.37
Supplemental Review—[13] Interconnection Customers	500	1	500	0.5 $35.37	250 $17,685	35.37
Supplemental Review—Transmission Providers	142	3.52	500	20 $1,454.60	10,000 $727,300	5,121.83
Review of Required Upgrades—Interconnection Customers	250	1	250	1 $72.73	250 $18,182.50	72.73
Review of Required Upgrades—Transmission Providers	142	1.76	250	2 $145.46	500 $36,365	256.09
Totals			3,241		16,221 $1,179,360.25	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[10] All of the requirements for transmission providers are mandatory. All of the requirements for interconnection customers are voluntary.

[11] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $75 per Hour = Average Cost per Response. This figure is the average of the salary plus benefits for an attorney, consultant (engineer), engineer, and administrative staff. The wages are derived from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm* and the benefits figure from *http://www.bls.gov/news.release/ecec.nr0.htm*.

[12] We assume each request for a pre-application report corresponds with one interconnection customer.

[13] In the initial public notice for this collection the Commission had an error in the Total Annual Cost and Cost per Respondent fields for this category of burden. We correct the errors in this notice.

Dated: July 25, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18043 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2492–013]

Woodland Pulp, LLC: Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 2492–013.

c. *Date filed:* February 28, 2014.

d. *Applicant:* Woodland Pulp, LLC (Woodland Pulp).

e. *Name of Project:* Vanceboro Dam Storage Project.

f. *Location:* The existing project is located on the outlet of Spednik Lake, on the east branch of the Saint Croix River, in Washington County, Maine and New Brunswick, Canada. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jay Beaudoin, Woodland Pulp, LLC, 144 Main Street, Baileyville, Maine 04694, (207) 427–4005 or *Jay.Beaudoin@woodlandpulp.com*.

i. *FERC Contact:* Michael Watts, (202) 502–6123 or *michael.watts@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The first page of any filing should include docket number P–2492–013.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Vanceboro Dam Storage Project consists of: (1) A 16-foot-high, 469-foot-long dam comprised of a 170-foot-long earthen embankment section, a 230-foot-long earthen embankment section, and a 69-foot-long gated concrete spillway section with two 22.5-foot-long, 14.5-foot-high steel Tainter gates with a crest elevation of 385.86 feet above mean sea level (msl); (2) an 8-foot-wide concrete vertical-slot fishway; (3) an 18,558-acre impoundment (Spednik Lake) with a maximum pool elevation of 385.86 feet msl; and (4) appurtenant facilities.

The Vanceboro Dam Storage Project operates in a store-and-release mode with the impoundment elevation fluctuating on an annual basis. The existing license requires a minimum impoundment elevation of 371.5 feet msl between October 1 and April 30; a minimum impoundment elevation of 376.5 feet msl between May 1 and September 30; a maximum impoundment elevation of 385.86 feet msl; and a year round minimum downstream flow of 200 cubic feet per second in the east branch of the Saint Croix River downstream of the project.

Woodland Pulp is not proposing any new project facilities or changes in project operation.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	September 2014
Commission issues EA	January 2015
Comments on EA	February 2015
Modified terms and conditions.	March 2015

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: July 24, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18008 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–015]

Alabama Power Company: Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2203–015.

c. *Date filed:* August 16, 2013.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Holt Hydroelectric Project.

f. *Location:* The project is located at the U.S. Army Corps of Engineers' existing Holt Lock and Dam on the Black Warrior River in Tuscaloosa County, Alabama and occupies 36.64 acres of Corps lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contacts:* Mr. Jim Heilbron, Senior Vice President and Senior Production Officer, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35203–2206, (205) 257–1000.

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181, or via email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration,

using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2203–015.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Portions of the existing Holt Project facilities that are owned and operated by Alabama Power consist of: (1) A 130-foot-long concrete non-overflow dam; (2) a 110-foot long earth fill dam located between the non-overflow structure and the right abutment; (3) a powerhouse integral with the dam containing one turbine with an installed capacity of 46,944-kilowatts; (4) a 2.48-mile-long transmission line; and (5) Overlook Park, a project recreation site. The applicant estimates that the total average annual generation would be 153,604,600 kilowatt hours. All generated power is utilized within the applicant's electric utility system. Additionally, Alabama Power proposes correct the mapping of the project boundary from 46.59 acres to 50.08 acres. The change would affect privately owned lands, resulting in no land disturbing activities.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process

The Commission staff intends to prepare an Environmental Assessment (EA) for the Holt Hydroelectric Project, in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on July 23, 2014.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, call 1–866–208–3676, or for TTY, (202) 502–8659.

Dated: July 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18010 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP14–522–000; PF14–5–000]

Algonquin Gas Transmission, LLC; Notice of Application

July 24, 2014.

Take notice that on July 10, 2014, Algonquin Gas Transmission, LLC (Algonquin), 5400 Westheimer Court, Houston, Texas 77056, filed an application in Docket No. CP14–522–000, pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for authority to construct, and operate its Salem Lateral Project (Salem Lateral) located in Salem, Massachusetts. Specifically, Algonquin requests authority to (1) construct 1.2 miles of 16 inch diameter pipeline and associated facilities, (2) construct one new metering and regulating station, and (3) establish an initial recourse rate for service on the Salem Lateral, in order to provide 115,000 dekatherms per day of firm transportation service to the redeveloped Salem Harbor Station facility of Footprint Power Salem Harbor Development, LP., all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Berk Donaldson, General Manager, Rates and Certificates, or DeAndra Black, Analyst, Rates and Certificates, Algonquin Gas Transmission, LLC, P.O. Box 1642, Houston, Texas 77251–1642, or by phone at 713–627–4488, by fax at 713–627–5947, or by email at *bdonaldson@spectraenergy.com.*

On November 4, 2013, Commission staff granted Algonquin's request to use the pre-filing process and assigned Docket No. PF14–5–000 to staff activities involving the Salem Lateral. Now, as of the filing of this application on July 10, 2014, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP14–522–000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern Time on August 14, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18007 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–496–000]

Dominion Transmission, Inc.: Notice of Intent To Prepare an Environmental Assessment for the Proposed Clarington Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Clarington Project (Project) involving construction and operation of facilities by Dominion Transmission, Inc. (DTI) in Marshall County, West Virginia and Monroe County, Ohio. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 23, 2014.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DTI provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

DTI proposes to construct, install, own, operate and maintain certain compression facilities located in Marshall County, West Virginia and Monroe County, Ohio. The Project would provide 250,000 dekatherms per day of firm transportation service for CNX Gas Company, LLC at a proposed new interconnect known as the TET-Arman Hill Interconnect and at a proposed new interconnect known as the REX-German Ridge Interconnect, both of which are located in Monroe County, OH. According to DTI, its Project would create increased access for production in this region to major natural gas markets of the Northeast and Mid-Atlantic regions of the United States.

The Clarington Project would consist of the following facilities:

- A new 6,130 horsepower (hp) gas turbine/compressor package and auxiliary equipment at DTI's existing Burch Ridge Station in Marshall County, WV;
- Two new 5,000 hp reciprocating compression units and auxiliary equipment at DTI's existing Mullett Station in Monroe County, OH;
- 2,612 feet of new 20-inch-diameter suction piping and 2,756 feet of new 16-inch-diameter discharge piping which would connect the Mullett Compressor Station to two proposed new interconnects;
- Two new metering and regulation facilities in Monroe County, OH: The TET-Arman Hill Interconnect and the REX-German Ridge Interconnect; and
- A 987-foot-long 16-inch-diameter pipeline section to connect the new proposed REX-German Ridge Interconnect to the Rockies Express Pipeline in Monroe County, OH.

The general location of the Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities at the Burch Ridge Station would occur within the confines of the existing station and disturb 8.47 acres of land. Following construction, DTI would maintain 3.18 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses. Construction of the proposed aboveground and pipeline facilities at the existing Mullett Station as well as the two new metering and regulation facilities in Monroe County, OH would disturb 29.69 acres of land. Following construction, DTI would maintain 8.97 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 23, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–496–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–496). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 24, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18006 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM13–7–001]

Protection System Maintenance Reliability Standard: Notice of Filing

Take notice that on June 4, 2014, the North American Electric Reliability Corporation filed a proposed revision to a Violation Severity Level assigned to Requirement R1 in Protection System Maintenance Reliability Standard PRC–005–2, pursuant to Order No. 793.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 13, 2014.

Dated: July 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18009 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14286–001]

Haiwee Ridge Pumped Storage Project; Notice of Application for Amendment of Preliminary Permit Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

On July 2, 2014, Gridflex Energy, LLC on behalf of Haiwee Ridge Hydro, LLC (permitee), filed an amendment to its preliminary permit issued on March 23, 2012,[1] for the proposed Haiwee Ridge Pumped Storage Project No. 14286 (project) to be located on the South Haiwee reservoir, near the Town of Olancha, Inyo County, California.[2] The project would be located almost entirely on land managed by the Bureau of Land Management (BLM).

The preliminary permit issued on March 23, 2012, was issued to the permittee to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and the alternatives it considers. Each of following alternatives considered would consist of a project with a total installed capacity of 500 megawatts (MW):

South Haiwee Alternative A: (1) An upper reservoir formed by a 160-foot-high by 2,270-foot-long, roller-compacted concrete (RCC) dam, two saddle dams (a 35-foot-high by 680-foot-long RCC dam and a 65-foot-high by 680-foot-long RCC dam) having a total storage capacity of 15,100 acre-feet and a water surface area of 175 acres at full pool elevation of 5,050 feet msl; (2) a lower reservoir formed by the 81-foot-

[1] *Protection System Maintenance Reliability Standard,* Order No. 793, 145 FERC ¶ 61,253 (2013).

[1] 138 FERC ¶ 62,298.

[2] On July 15, 2014, Gridflex Energy, LLC, on behalf of Haiwee Ridge Hydro, LLC, filed a correction to the July 2, 2014 application to amend the preliminary permit for the Haiwee Ridge Pumped Storage Project.

high by 1,555-foot-long potentially rebuilt South Haiwee dam having a total storage capacity of 46,600 acre-feet and a water surface area of 660 acres at full pool elevation of 3,756 feet msl; (3) approximately 13,150 feet of conduit connecting the upper to the lower reservoir in three different sections: A 3,000-foot-long by 18.5-foot-diameter, concrete-lined low-pressure tunnel, a 7,850-foot-long by 18.5-foot-diameter concrete-lined pressure shaft, and a 2,300-foot-long by 22.2-foot diameter tailrace; and (4) an underground powerhouse located roughly 1,500 feet east of South Haiwee reservoir at an elevation of 3,600 feet msl.

South Haiwee Alternative B: (1) An upper reservoir formed by a 210-foot-high by 1,320-foot-long, RCC dam and a 25-foot-high by 800-foot-long RCC saddle dam having a total storage capacity of 14,235 acre-feet and a water surface area of 241 acres at full pool elevation of 5,000 feet msl; (2) a lower reservoir formed by the 91-foot-high by 1,523-foot-long potentially rebuilt South Haiwee dam having a total storage capacity of 46,600 acre-feet and a water surface area of 800 acres at full pool elevation of 3,756 feet msl; (3) approximately 14,700 feet of conduit connecting the upper to the lower reservoir in three different sections: A 5,100-foot-long by 18.9-foot-diameter, concrete-lined low-pressure tunnel, a 5,600-foot-long by 18.9-foot-diameter concrete-lined pressure shaft, and a 4,000-foot-long by 22.7-foot diameter tailrace; and (4) an underground powerhouse located roughly 3,300 feet southeast of South Haiwee reservoir at an elevation of 3,580 feet msl.

New Reservoir Alternative: (1) An upper reservoir formed by a 210-foot-high by 1,320-foot-long, RCC dam having a total storage capacity of 14,235 acre-feet and a water surface area of 241 acres at full pool elevation of 5,000 feet msl; (2) a lower reservoir formed by a 60-foot-high by 10,600-foot-long RCC dam having a total storage capacity of 46,600 acre-feet and a water surface area of 800 acres at full pool elevation of 3,756 feet above msl; (3) approximately 12,500 feet of conduit connecting the upper to the lower reservoir in three different sections: A 3,750-foot-long by 17.5-foot-diameter, concrete-lined low-pressure tunnel, a 6,300-foot-long by 17.5-foot-diameter concrete-lined pressure shaft, and a 2,500-foot-long by 21-foot diameter tailrace; and (4) an underground located roughly 8,500 feet southwest of South Haiwee reservoir at an elevation of 3,400 feet msl.

As a result of preliminary investigations, the permittee now proposes to make the following changes to their issued permit: (1) Eliminate the lower reservoir from the New Reservoir Alternative (item 2 in the previous paragraph); (2) change the total installed capacity of Alternative B from 500 MW to 250 MW; and (3) adjust the project boundary to remove the lands associated with the lower reservoir of the New Reservoir Alternative and to include additional federal lands, managed by the BLM, necessary for the proposed project.

Applicant Contact: Mr. Matthew Shapiro, Haiwee Ridge Hydro, LLC., 1210 W. Franklin St., Ste. 2, Boise, ID 83702; phone (208) 246–9925.

FERC Contact: Kenneth Hogan, 202–502–8434 or via email at: *Kenneth.Hogan@ferc.gov.*

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14286–001.

More information about this project, including a copy of the amendment application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14286) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 25, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18044 Filed 7–30–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9914–61–Region 3]

Adequacy Status of the Maintenance Plan for the Baltimore, Maryland 1997 Fine Particulate National Ambient Air Quality Standard Nonattainment Area for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, the Environmental Protection Agency (EPA) is notifying the public that EPA has found that the motor vehicle emissions budgets (MVEBs) in the Baltimore, Maryland (MD) 1997 Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) Nonattainment Area Maintenance Plan (Baltimore Maintenance Plan), submitted as a State Implementation Plan (SIP) revision by Maryland Department of the Environment (MDE), are adequate for transportation conformity purposes. As a result of EPA's finding, the State of Maryland must use the 2017 and 2025 MVEBs from the Baltimore Maintenance Plan for future conformity determinations for the 1997 $PM_{2.5}$ NAAQS.

DATES: The adequacy finding for the $PM_{2.5}$ MVEBs is effective on August 15, 2014

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, Physical Scientist, Office of Air Program Planning (3AP30), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2036; *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region III sent a letter to MDE on July, 2, 2014, stating that EPA has found that the MVEBs in the Baltimore Maintenance Plan for budget years 2017 and 2025, submitted on December 12, 2013 by MDE, are adequate for transportation conformity purposes. As a result of EPA's finding, the State of Maryland must use the 2017 and 2025 MVEBs from the December 12, 2013 Baltimore Maintenance Plan for future conformity determinations in the Baltimore, MD 1997 $PM_{2.5}$ NAAQS Nonattainment Area. Receipt of the submittal was announced on EPA's transportation conformity Web site. No comments were received. The findings letter is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The adequate particulate matter (PM) and nitrogen oxides (NO_X) MVEBs are provided in Table 1.

TABLE 1—ON-ROAD MVEBS CONTAINED IN THE BALTIMORE, MD 1997 $PM_{2.5}$ NONATTAINMENT AREA MAINTENANCE PLAN FOR THE 1997 $PM_{2.5}$ NAAQS

Year	Motor vehicle emissions budget for $PM_{2.5}$ on-road emissions (tons per year)	Mobile vehicle emissions budget for NO_X on-road emissions (tons per year)
2017	1,218.60	29,892.01
2025	1,051.39	21,594.96

Transportation conformity is required by section 176(c) of the Clean Air Act (CAA). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA described the process for determining the adequacy of submitted SIP budgets in a July 1, 2004 preamble starting at 69 FR 40038 and used the information in these resources in making this adequacy determination. The State of Maryland did not provide emission budgets for sulfur dioxide (SO_2), volatile organic compounds (VOCs), or ammonia for the Baltimore Maintenance Plan because it concluded that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem. The transportation conformity rule provision at 40 CFR 93.102(b)(2)(v) indicates that conformity does not apply for these precursors, due to the lack of motor vehicle emissions budgets for these precursors and state's conclusion that motor vehicle emissions of SO_2, VOCs, and ammonia do not contribute significantly to the area's $PM_{2.5}$ nonattainment problem. This provision of the transportation conformity rule predates and was not disturbed by the January 4, 2013 decision in the litigation on the $PM_{2.5}$ implementation rule.[1] EPA has preliminarily concluded that Maryland's decision to not include budgets for SO_2, VOCs, and ammonia is consistent with the requirements of the transportation conformity rule. That decision does not affect EPA's adequacy finding for the submitted $PM_{2.5}$ and NO_X MVEBs for the Baltimore Maintenance Plan.

Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if EPA finds the budgets for the Baltimore Maintenance Plan adequate, the SIP could later be disapproved. The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: July 11, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–18046 Filed 7–30–14; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250 (January 4, 2013), in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9914–60–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Center for Biological Diversity in the United States District Court for the Northern District of California: *Center for Biological Diversity* v. *McCarthy,* Civil Action No. 4:13–cv–5142–SBA (N.D. Cal.). On November 5, 2013, Plaintiff filed a complaint; on January 28, 2014, Plaintiff filed a first amended complaint; and on January 30, 2014, Plaintiff filed a second amended complaint. Plaintiff alleged that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA''), failed to: (a) Perform a mandatory duty to find that certain states failed to submit nonattainment state implementation plans (''SIPs'') for named areas designated nonattainment for the 2006 fine particulate matter, or $PM_{2.5}$, National Ambient Air Quality Standard (''NAAQS''); and (b) take timely final action to approve or disapprove, in whole or in part, certain 2006 $PM_{2.5}$ NAAQS nonattainment SIP submissions addressing nonattainment new source review from states for named areas. The proposed consent decree would establish deadlines for EPA to take some of these actions.

DATES: Written comments on the proposed consent decree must be received by September 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2014–0553, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Karen Bennett Bianco, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460;

telephone: (202) 564–3298; fax number: (202) 564–5603; email address: *bennett.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Center for Biological Diversity seeking to compel the Administrator to take actions under CAA sections 110(k)(1)–(4). Under the terms of the proposed consent decree, EPA would agree to sign a notice of final rulemaking to approve, disapprove, or approve in part and disapprove in part, certain nonattainment new source review plans no later than the date indicated for the following areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS: (a) Los Angeles—South Coast, California area by April 15, 2015; (b) San Joaquin Valley, California area by September 1, 2014; and (c) Fairbanks, Alaska area by December 31, 2014. If either California or Alaska withdraws a listed submittal, then EPA's obligation to take the required action is automatically terminated.

Under the terms of the proposed consent decree, EPA will deliver notice of each action to the Office of the Federal Register for review and publication within 15 days of signature. In addition, the proposed consent decree outlines the procedure for the Plaintiff to request costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by OGC–2014–0553) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 23, 2014.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2014–18048 Filed 7–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Daisy Mae Concepcion Viva Taleon dba DMT Global Logistics (NVO & OFF), 634 N. Poplar Street, Unit H, Orange, CA 92868, Officers: Daisy V. Taleon, Managing Member (QI), Catherine V. Guevara, Member, Application Type:

Business Structure Change to DMT Global Logistics LLC

Intelligent SCM LLC dba AWA Lines dba AWA Logistics dba Amerian Worlwide, Agencies dba Island Cargo Support (NVO), 3910 Cover Street, Long Beach, CA 90808, Officers: Jeffrey W. Schumacher, Vice President (QI), Alex F. Knowles, Secretary, Application Type: QI Change

Ma International Services Inc. dba Marine Air Logistics (NVO), 161–15 Rockaway Blvd., Suite 209, Jamaica, NY 11434, Officer: Rick C.Y. Ma, President (QI), Application Type: New NVO License

Modern Logistic Services, Inc (NVO & OFF), 1800 NW., 135th Avenue, Suite #108, Miami, FL 33182, Officer: Nello P. Khan, President (QI), Application Type: New NVO & OFF License

Paxton Van Lines, Incorporated dba Meridian Container Lines (NVO & OFF), 5300 Port Royal Road, Springfield, VA 22151, Officers: Fred D. Paxton II, President (QI), Shannon Viveiros, Vice President, International Operations, Application Type: Add Trade Name Paxton International

Transglobal Logistics Inc. (NVO & OFF), 30 Knightsbridge Road, Suite 525, Piscataway, NJ 08854, Officers: Devinda A. Molligoda, Secretary (QI), Sanjay Chopra, President, Application Type: QI Change

By the Commission.

Dated: July 25, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–17985 Filed 7–30–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason indicated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 4266F.

Name: Aharon, Evelyn, O dba Cargoplan International.

Address: 41 Conshohocken State Road, Apt. 114, Bala Cynwyd, PA 19004.

Date Surrendered: July 14, 2014.

Reason: Voluntary surrender of license.

License No.: 021266NF.

Name: Tri-Best Logistics, Inc.

Address: 16700 Valley View Avenue, Suite 162, La Mirada, CA 90638.

Date Surrendered: July 2, 2014.

Reason: Voluntary surrender of license.

License No.: 022425NF.

Name: RDR Worldwide, LLC.

Address: 1230 West Bagley Road, Berea, OH 44017.

Date Surrendered: July 2, 2014.

Reason: Voluntary surrender of license.

Sandra L. Kusumoto.

Director, Bureau of Certification and Licensing.

[FR Doc. 2014–17982 Filed 7–30–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2014.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *KEDAP S.A. de C.V.,* Mexico City, Mexico; to become a bank holding company by acquiring 29.35 percent of the voting shares of Vibra Bank, Chula Vista, California.

Board of Governors of the Federal Reserve System, July 28, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–18033 Filed 7–30–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces fees for vessel sanitation inspections for Fiscal Year (FY) 2015. These inspections are conducted by HHS/CDC's Vessel Sanitation Program (VSP). VSP helps the cruise line industry fulfill its responsibility for developing and implementing comprehensive sanitation programs to minimize the risk for acute gastroenteritis. Every vessel that has a foreign itinerary and carries 13 or more passengers is subject to twice-yearly unannounced inspections and, when necessary, reinspection.

DATES: These fees are effective October 1, 2014, through September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Capt Jaret T. Ames, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS F–58, Atlanta, Georgia 30341–3717; phone: 800–323–2132, email: *vsp@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Background

HHS/CDC established the Vessel Sanitation Program (VSP) in the 1970s as a cooperative activity with the cruise ship industry. VSP helps the cruise ship industry prevent and control the introduction, transmission, and spread of gastrointestinal illnesses on cruise ships. VSP operates under the authority of the Public Health Service Act (Section 361 of the Public Health Service Act; 42 U.S.C. 264, ''Control of Communicable Diseases''). Regulations found at 42 CFR 71.41 (Foreign Quarantine—Requirements Upon

Arrival at U.S. Ports: Sanitary Inspection; General Provisions) state that carriers arriving at U.S. ports from foreign areas are subject to sanitary inspections to determine whether rodent, insect, or other vermin infestations exist, contaminated food or water, or other sanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable diseases are present.

The fee schedule for sanitation inspections of passenger cruise ships by VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019). HHS/CDC began collecting fees on March 1, 1988. This notice announces fees that are effective for FY 2015, beginning on October 1, 2014, through September 30, 2015.

The following formula will be used to determine the fees:

$$Average\ cost\ per\ inspection = \frac{Total\ cost\ of\ VSP}{Weighted\ number\ of\ annual\ inspections}$$

The average cost per inspection is multiplied by size and cost factors to determine the fee for vessels in each size category. The size and cost factors were established in the fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060). The fee schedule was most recently published in the **Federal Register** on August 21, 2013 (77 FR 50511). The size and cost factors for FY 2015 are presented in Appendix A.

Fee

The fee schedule (Appendix A) will be effective October 1, 2014, through September 30, 2015. If travel expenses or other charges to VSP change, the fee schedule may need to be adjusted before September 30, 2014. If a fee adjustment is necessary, HHS/CDC will publish a notice in the **Federal Register** with the amended fee schedule (Appendix A) as soon as possible and at least 30 days before the effective date.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of HHS/CDC's VSP. Inspections and reinspections involve the same procedures, require the same amount of time, and are therefore charged at the same rates.

Dated: July 25, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

Appendix A

SIZE/COST FACTORS USED TO DETERMINE INSPECTION FEES

Vessel size (GRT [1])	Approximate cost per GRT [1]
Extra Small (<3,001 GRT)	US$0.25
Small (3,001–15,000 GRT)	US$0.50
Medium (15,001–30,000 GRT)	US$1.00
Large (30,001–60,000 GRT)	US$1.50
Extra Large (60,001–120,000 GRT)	US$2.00

SIZE/COST FACTORS USED TO DETERMINE INSPECTION FEES—Continued

Vessel size (GRT [1])	Approximate cost per GRT [1]
Mega (≤120,001 GRT)	US$3.00

FEE SCHEDULE FOR EACH VESSEL SIZE

Vessel size (GRT [1])	Inspection fee
Extra Small (<3,000 GRT)	US$1,495
Small (3,001–15,000 GRT)	US$2,990
Medium (15,001–30,000 GRT)	US$5,980
Large (30,001–60,000 GRT)	US$8,970
Extra Large (60,001–120,000 GRT)	US$11,960
Mega (≤120,001 GRT)	US$17,940

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

[FR Doc. 2014–17981 Filed 7–30–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N164; FXES11130800000–145–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before September 2, 2014.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–218630

Applicant: Irena Mendez, Los Angeles, California

The applicant requests a permit renewal to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–821229

Applicant: David G. Crawford, Camarillo, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, and collect voucher specimens) the tidewater goby (*Eucyclogobius newberryi*), and take (harass by survey, capture, handle, and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with

surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–58888A

Applicant: Dale E. Ritenour, La Mesa, California

The applicant requests an amendment to a permit to take (capture, collect, receive, transport, hatch, identify, and rear) the Riverside fairy shrimp (*Streptocephalus woottoni*), and San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with fairy shrimp cyst identification activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–54614A

Applicant: California Department of Fish and Wildlife, Rancho Cordova, California

The applicant requests a permit amendment to take (survey, capture, handle, transport, hold in captivity, captive propagate, obtain genetic samples, and release) the Amargosa vole (*Microtus californicus scirpensis*) while conducting scientific research and captive propagation activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–161496

Applicant: California State Parks, Felton, California

The applicant requests a permit renewal to take (survey, capture, handle, mark, collect genetic material, record morphological data, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with survey and research activities throughout the range of the species in Santa Cruz and San Mateo Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–41825B

Applicant: Virgil T. Parker, Pacifica, California

The applicant requests a permit to remove/reduce to possession *Arctostaphylos glandulosa* subsp. *crassifolia* (Del Mar manzanita) in conjunction with population surveys and genetic research activities on Federal lands in San Diego County, California, for the purpose of enhancing the species' survival.

Permit No. TE–808214–5

Applicant: Sonoma County Water Agency, Santa Rosa, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California freshwater shrimp (*Syncaris pacifica*) and California tiger salamander (Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with surveys and population monitoring in Sonoma County, California, for the purpose of enhancing each species' survival.

Permit No. TE–801346

Applicant: Geoffrey L. Rogers, San Diego, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population monitoring activities in San Diego, Riverside, Orange, and Imperial Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–038716

Applicant: Frank J. Wegscheider, Placentia, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–108099

Applicant: Jane Higginson, Lakeside, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–09389A

Applicant: Michelle E. Giolli, El Cerrito, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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: July 25, 2014.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–18015 Filed 7–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N161; FXES11130800000–145–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before September 2, 2014.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and

Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–802094

Applicant: Carl J. Page, Smith River, California

The applicant requests a permit renewal to take (harass by survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) and unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with surveys and population monitoring activities throughout the range of each species in California, for the purpose of enhancing the species' survival.

Permit No. TE–35387A

Applicant: Danielle C. Glenn, Ventura, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys and population monitoring activities throughout the range of the species in Ventura County, California, for the purpose of enhancing the species' survival.

Permit No. TE–094893

Applicant: Santa Barbara Botanic Garden, Santa Barbara, California

The applicant requests a permit renewal to remove/reduce to possession the following plant species, in conjunction with surveys and monitoring activities on Federal lands throughout the range of each species in California, for the purpose of enhancing each species' survival:

- *Arabis mcdonaldiana* (McDonald's rockcress),
- *Arenaria paludicola* (marsh sandwort),
- *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch),
- *Berberis nevinii* (Nevin's barberry),
- *Berberis pinnata* subsp. *insularis* (island barberry),
- *Castilleja mollis* (soft-leaved paintbrush),
- *Caulanthus californicus* (California jewelflower),
- *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle),
- *Cirsium loncholepis* (La Graciosa thistle),
- *Clarkia speciosa* var. *immaculata* (Pismo clarkia),
- *Chloropyron maritimum* subsp. *maritimum* (*Cordylanthus maritimus* subsp. *maritimus*) (salt marsh bird's-beak),
- *Deinandra increscens* subsp. *villosa* (Gaviota tarplant),
- *Delphinium variegatum* subsp. *kinkiense* (San Clemente Island larkspur),
- *Dudleya traskiae* (Santa Barbara Island liveforever),
- *Eremalche kernensis* (Kern mallow),
- *Eriodictyon altissimum* (Indian Knob mountain balm),
- *Eriodictyon capitatum* (Lompoc yerba santa),
- *Galium buxifolium* (island bedstraw),
- *Gilia tenuiflora* subsp. *hoffmannii* (Hoffmann's slender-flowered gilia),
- *Layia carnosa* (Beach layia),
- *Lithophragma maximum* (San Clemente Island woodland-star),
- *Lupinus nipomensis* (Nipomo Mesa lupine),
- *Malacothamnus clementinus* (San Clemente Island bush-mallow),
- *Malacothamnus fasciculatus* var. *nesioticus* (Santa Cruz Island bush-mallow),
- *Malacothrix indecora* (Santa Cruz Island malacothrix),
- *Malacothrix squalida* (island malacothrix),
- *Nasturtium gambelii* (*Rorippa g.*) (Gambel's watercress),
- *Pentachaeta lyonii* (Lyon's pentachaeta),
- *Sibara filifolia* (Santa Cruz Island rockcress), and
- *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod).

Permit No. TE–100006

Applicant: Freeman Biological, Crescent City, California

The applicant requests a permit amendment to take (survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with survey activities throughout the range of the species in San Francisco, San Mateo, and Santa Cruz Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–40211B

Applicant: Melissa M. Newman, Sonora, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County Distinct Population Segment (DPS) and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–806679

Applicant: Spring Rivers Ecological Sciences, LLC, Cassel, California

The applicant requests a permit renewal to take (capture, weigh, mark, collect voucher, collect tissue, release, and translocate/release to restored habitat) the Shasta crayfish (*Pacifastacus fortis*) in conjunction with surveys and scientific research activities in Shasta County, California, for the purpose of enhancing the species' survival.

Permit No. TE–006559

Applicant: Dale A. Powell, Riverside, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–40218B

Applicant: John Kunna, Palo Alto, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Sonoma County DPS) (*Ambystoma californiense*), and take (survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–237061

Applicant: Daniel H. Chase, San Francisco, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius*

newberryi) in conjunction with surveys, research, and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–032713

Applicant: California Department of Transportation, Fresno, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, handle, and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and giant kangaroo rat (*Dipodomys ingens*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–031913

Applicant: Morgan L. Ball, Lompoc, California

The applicant requests a permit renewal and amendment to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, locate and monitor nests, capture, band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–110382

Applicant: Ava R. Edens, Mission Viejo, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California, for the purpose of enhancing the species' survival.

Permit No. TE–41182B

Applicant: Karen L. Pope, Arcata, California

The applicant requests a permit to take (survey, capture, handle, swab, and release) the Sierra Nevada yellow-legged frog (*Rana sierrae*) in conjunction with survey and population monitoring activities in Butte, Sierra, Nevada, Placer, and El Dorado Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–203081

Applicant: John P. LaBonte, Goleta, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–41184B

Applicant: Mason D. Hyland, Gilroy, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–830213

Applicant: EcoPlan Associates, Mesa, Arizona

The applicant requests a permit renewal and amendment to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys and population monitoring activities in Riverside, San Bernardino, and Imperial Counties, California, and Clark County, Nevada, for the purpose of enhancing each species' survival.

Permit No. TE–41613B

Applicant: Mitch W. Stewart, Sacramento, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population monitoring activities in Tulare County, California, for the purpose of enhancing the species' survival.

Permit No. TE–89998A

Applicant: Matthew L. Amalong, Fountain Valley, California

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, handle, and band) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–049175

Applicant: Melanie R. Dicus, Black Canyon, Arizona

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–027427

Applicant: Jeff A. Alvarez, Sacramento, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (harass by survey, capture, handle, collect tissue and vouchers, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey and population monitoring activities throughout the range of each species in

California for the purpose of enhancing the species' survival.

Permit No. TE–094318

Applicant: Jessica S. Vinje, Escondido, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with nest monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–104080

Applicant: Stephen A. Sykes, Roseville, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–43668A

Applicant: Gerald T. Braden, Angelus Oaks, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, capture, band, color-band, release and remove brown-headed cowbird [*Molothrus ater*] eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests, color-band, release and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo belli pusillus*); take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*) and Yuma clapper rail (*Rallus longirostris yumanensis*); and take (capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) and the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with nest monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–094642

Applicant: Howard B. Shaffer, Los Angeles, California

The applicant requests a permit amendment to take (conduct training workshops) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with training activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–027422

Applicant: Brian T. Pittman, Petaluma, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (capture, handle, mark and release, collect tissue or small individuals for genetic analysis, and collect voucher specimens) the California tiger salamander (Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–18012 Filed 7–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N156; FXIA16710900000–145–FF09A30000]

Notice of Suspension of Imports of Zimbabwe Elephant Trophies Taken in 2014 on or After April 4, 2014

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On July 17, 2014, the U.S. Fish and Wildlife Service (Service) made a determination that the import of sport-hunted African elephant trophies taken in Zimbabwe on or after April 4, 2014, until December 31, 2014, would be suspended. The decision to suspend importation of African elephant trophies taken in Zimbabwe was due to the Service being unable to determine that the killing of the animal whose trophy is intended for import into the United States would enhance the survival of the species in the wild. Due to technical revisions needed to address an editorial error and to reflect consideration of ETIS data from the 16th Meeting of the Conference of Parties to CITES unintentionally left out of the July 17 finding document, the July 17 document was revised on July 22. These technical revisions did not alter the analysis or decision announced in the July 17 finding. This 2014 determination supersedes the interim suspension published in the **Federal Register** on May 12, 2014.

ADDRESSES: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041–3803; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The African elephant (*Loxodonta africana*) is listed as threatened under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* and is regulated under a special rule found at 50 CFR 17.40(e). The special rule includes specific requirements for the import of sport-hunted trophies. Under paragraph 17.40(e)(3)(iii)(C), in order for the Service to authorize the import of a sport-hunted elephant trophy, the Service must find that the killing of the animal whose trophy is intended for import would enhance the survival of the species in the wild (an ''enhancement finding'').

Zimbabwe has had an active elephant hunting program for over 20 years, and imports into the United States have occurred at least since 1997, when the Zimbabwe elephant population, along with populations in Botswana and Namibia, was downlisted to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (South Africa's population was downlisted at a later

date). When the population was downlisted, the Service published a **Federal Register** notice that acknowledged that, because Zimbabwe's elephants were an Appendix-II population, no U.S. import permit would be required to import trophies, but we did state that, in accordance with the special rule under the ESA, the requirement for an enhancement finding would continue to apply (62 FR 44627; August 22, 1997). In that **Federal Register** notice, we stated that, in making the required enhancement finding for the import of sport-hunted trophies, the Service would review the status of the elephant population and the total management program for elephants in each country to ensure that the program was promoting the conservation of the species. The **Federal Register** also noted that the Service would make such findings on a periodic basis upon receipt of new information on the species' population or management. If, based on new information, the conditions of the special rule were no longer met, the Service explained that it would publish a notice in the **Federal Register** of any change.

On April 4, 2014, the Service announced an interim suspension of imports of sport-hunted elephant trophies taken in Zimbabwe during the 2014 season. This finding was revised on April 17, 2014, primarily to clarify that the suspension applied only to elephants hunted on or after April 4, 2014. This determination was announced in the **Federal Register** on May 12, 2014 (79 FR 26986). The decision to establish an interim suspension of imports of elephant trophies from Zimbabwe was due to the Service having insufficient information on the status of elephants in Zimbabwe as well as Zimbabwe's current elephant management program to make an enhancement finding.

Although African elephant conservation issues have received significant attention within CITES over the last 10 or more years, the Service has limited information on elephant management programs, efforts to control poaching, and the effects of legal hunting in Zimbabwe. While the Service was aware of a 1997 national elephant management plan, we were not aware of any updates to the plan, or whether an adaptive management approach had been taken in implementing the plan. In 2007, the Service sent a letter to the Parks and Wildlife Management Authority of Zimbabwe (ZPWMA) requesting additional information. While we did receive some information at that time, we had not received any additional updates directly from Zimbabwe since then.

Service representatives met in person with representatives from Zimbabwe at various times in the past 6 years, but again, little new or additional information was obtained. As stated, because African elephants have received a significant level of attention from the CITES Parties (member nations), including the United States, the Service had received information on African elephants in Zimbabwe from documents produced for CITES meetings or for other CITES-related activities. However, this information was focused more on the ivory trade and poaching, with less about regulatory mechanisms in place that would allow for appropriate management (including sport hunting) of elephants, sustainable utilization of elephants, and how elephant management is integrated into human communities to reduce human-elephant conflicts and support elephant populations.

On April 4, 2014, the Service sent a letter to Zimbabwe with a number of questions regarding the status of elephants in Zimbabwe and the hunting program. On April 17, 2014, the Director-General of ZPWMA sent a response (herein referred to as ZPWMA response) to the Service inquiry. Several weeks later, the Service received a number of documents, copies of Zimbabwean laws, and other supporting documentation that was referenced in the ZPWMA response. In addition, on June 6, 2014, the Service received additional supporting information from a U.S.-based conservation and hunting non-governmental organization (NGO). The Service has also received a number of comments from individuals and associations connected to the hunting industry in Zimbabwe or southern Africa.

Zimbabwe's current national elephant management plan consists of primarily two documents: *The Policy and Plan for Elephant Management in Zimbabwe* (1997) and *Elephant Management in Zimbabwe, third edition* (July 1996). Although the documents provide a well-developed list of goals and objectives, there is no information in these documents on how to achieve or fulfill these goals and objectives, nor do there appear to be any subsequent updates of the documents or reports that provide any indication of progress on fulfilling these management goals and objectives. Without management plans with specific goals and actions that are measurable and reports on the progress of meeting these goals, the Service cannot determine if ZPWMA is implementing the well-articulated, but general, goals and objectives that appear in *Elephant Management in Zimbabwe* and *The Policy and Plan for Elephant Management in Zimbabwe.* Overall, ZPWMA did not provide, and the Service otherwise does not have, any information indicating that Zimbabwe is implementing, on a national scale, appropriate management measures for its elephant populations.

According to the *IUCN SSC African Elephant Database report 2013 Africa,* the elephant population in Zimbabwe in 2007 was 99,107, of which 85 percent (84,416) was classified as ''definite'' and only 0.3 percent (291) was classified as ''speculative.'' While the total population in 2012 was estimated at 100,291, only 47 percent (47,366) was classified as ''definite'' and 45 percent (45,375) were classified as ''speculative.'' According to this report, half of the population estimates included in 2012 is older than 10 years, resulting in a degradation of the quality of data. Very few new surveys have been conducted since 2007, and of those conducted, they only covered a small percentage of the overall population. While the Zimbabwe government continues to state that elephant population estimates exceed 100,000 elephants, this number is clearly based on outdated information.

Without current population estimates and a better understanding of the offtake from other sources, such as poaching, culling, and problem animal control, it is not possible for the Service to determine if the total offtake exceeds recommendations made in Zimbabwe's management document, *Elephant Management in Zimbabwe,* that no more than 0.75 percent of all males in the population should be removed annually. With the reliability of current population estimates, it is not possible to evaluate if the current export quota of 500 elephants should be adjusted. There is currently a multi-national effort, the Pan African Elephant Aerial Survey, to conduct aerial surveys across most of the African elephant's range in 2014, including Zimbabwe. The survey will provide a more definitive estimate of Zimbabwe's population, along with a more robust carcass ratio (number of carcasses observed compared to the number of live elephants counted). In conjunction with data that will come from efforts carried out under the CITES' project, *Monitoring the Illegal Killing of Elephants,* a better understanding of the population dynamics within Zimbabwe can be developed. However, to provide accurate estimates, the Pan African Elephant Aerial Survey would have to be conducted using standardized survey

protocols that incorporate modern technological improvements, including the use of the latest technological advancements such as voice-data recordings and geo-referenced digital photographs of all elephant and carcass sightings.

The Zimbabwean Parks and Wild Life Act has established the regulatory mechanism for the ZPWMA and its programs, and also provides for substantial penalties for the unlawful possession of or trading in ivory. In addition, the General Laws Amendment Act (No. 5) of 2010 provides for mandatory imprisonment of not less than 9 years for poaching. If properly enforced, it appears these penalties would be a sufficient deterrent for poachers. However, based on the information the Service currently has, we do not have a good understanding of the ZPWMA's annual operational budget, how much money is generated by elephant hunting, or how these funds (or the lack of these funds) impacts the ability of ZPWMA to adequately implement the Parks and Wild Life Act or to carry out day-to-day management activities or anti-poaching efforts. In January 1996, the Government of Zimbabwe approved the establishment of the Parks and Wild Life Conservation Fund, a statutory fund responsible for financing operations directly from wildlife revenues. However, revenues generated through sport hunting conducted on State and private lands are primarily used to finance ZPWMA, and only limited additional funding is available from appropriated funds from the Zimbabwe government or outside funding from NGOs. A 2002 Panel of Experts, formed in connection with CITES, raised concerns as to the status of ZPWMA relating to its weak financial base, lack of management skills, inadequate and old equipment, and poor infrastructure. No new information relevant to these concerns was provided by ZPWMA or other sources as a result of the Service's April 4 inquiry. We have no current information as to the funding level of ZPWMA or any indication that the financial base, management skills, equipment, or infrastructure have improved.

According to information provided to the Service, Zimbabwe has methodology, including participation from a number of stakeholders, for establishing annual hunting quotas for all areas of the country. While the methodology is based on sound wildlife management principles used globally, the Service did not receive specific information on how these quotas are established, whether other forms of offtake, such as poaching and problem animal control, were taken into account, or to what degree biological factors are taken into consideration (as opposed to economic and societal considerations). The current quota-setting process utilized by ZPWMA may actually be a very effective system that takes into consideration all of these issues; however, without documentation of the system, the Service cannot determine if sport-hunting quotas are reasonable or beneficial to elephant populations and, therefore, whether sport hunting is enhancing the survival of the species.

In 1989, Zimbabwe established the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) to encourage reduction in human-elephant conflicts through conservation-based community development and to provide an economic incentive to improve community tolerance of wildlife, including elephants. The CAMPFIRE program has been the model for community-based conservation efforts in several other African countries and has been identified as an innovative program in the past. However, the CAMPFIRE program has come under criticism relating to excessive retention of generated funds by district councils, which resulted in diminished benefits being realized by the communities it was designed to help. Information supplied by the CAMPFIRE Association to the CITES Panel of Experts in 2002 indicates that this situation may be improving. The information that was provided to the Service does not, however, support or refute this statement. Under a community-based conservation program, like CAMPFIRE, rural communities should benefit from revenue generated by sport hunting. With increased human-elephant conflicts on Communal lands, sport hunting may be an important tool that gives these communities a stake in sustainable management of the elephant as a natural and economic resource and provides the enhancement that would meet the U.S. criteria for authorizing imports of trophies. However, without current information on how funds are utilized and the basis for hunting offtake, the Service is unable to confirm this assumption.

It should be stated, however, that there are clearly ''bright spots'' of elephant conservation efforts being carried out by non-governmental entities and individuals scattered around Zimbabwe that are providing a benefit to elephants. Individual safari outfitters and landowners have established their own management efforts, including anti-poaching activities, on areas under their control, either through ownership of the land or leases. These entities have made significant strides to ensure the long-term survival of elephants on their lands. These efforts, however, can and have been adversely affected by unilateral or seemingly arbitrary actions taken by the Central government or Rural District Councils, such as past land redistribution activities, that minimizes their conservation efforts. These ''bright spots'' are not numerous enough, in and of themselves, to overcome the problems currently facing Zimbabwe elephant populations or to support a finding that sport hunting throughout Zimbabwe would enhance the survival of the species.

Without current data on population numbers and trends, government efforts to manage elephant populations, efforts to address human-elephant conflicts and poaching, and the state of the hunting program within the country, the Service is unable to make a finding that sport hunting in Zimbabwe is enhancing the survival of the species and that imports of trophies would meet the criteria established under the ESA for African elephants. The July 17, 2014 enhancement finding (subsequently revised on July 22 to correct technical errors) has been posted at *http://www.fws.gov/international/pdf/enhancement-finding-July-2014-elephant-Zimbabwe.PDF.* In addition, the press release announcing the suspension and frequently asked questions is available on the Service's Web page (*www.fws.gov/international*).

This suspension does not prohibit U.S. hunters from traveling to Zimbabwe and participating in an elephant hunt. The ESA does not prohibit take (e.g., hunting) outside the United States; it only prohibits import of trophies taken during such hunts without authorization under the ESA. Therefore, it is also possible that hunters who hunt in Zimbabwe on or after April 4, 2014, could import their trophies at a later date if the Service can determine in the future that such imports meet the criteria under the ESA.

Further, this decision does not affect elephants taken in Zimbabwe prior to the Service's April 4, 2014, decision. Elephants hunted in previous hunting seasons are also still eligible to be imported, provided all CITES and import regulations are met.

Dated: July 24, 2014.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–18013 Filed 7–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL LLIDI00000–L10200000–PH0000–LXSSD0090000 241A 4500063890]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Salmon, Idaho, September 9–10, 2014 for a two-day meeting at the Salmon Field Office, 1206 S. Challis, Salmon, Idaho. The first day will begin at 10:30 a.m. and adjourn at 4:30 p.m. The second day will begin at 8:30 a.m. and adjourn around 3 p.m.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: *sawheeler@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District, which covers eastern Idaho.

Items on the agenda include: An overview of current issues affecting the BLM, public comment period, the High Divide project, Sharkey Hot Springs Update, National Wild Horse and Burro RAC information, Panther Greek Geothermal Project Update and a formal discussion on the Upper Salmon Basin Watershed Project. At 8:30 a.m. on September 10, the RAC will meet at the Public Land Center and depart for a tour of Discovery Hill. The group will discuss a variety of issues impacting the area. Following Discovery Hill, the group will head south towards Tendoy to tour the Upper Salmon Basin Watershed and view creek restoration projects including Lee Creek. Agenda items and location may change due to weather and other environmental circumstances.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments (10:30–11 a.m. on September 9). Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: July 23, 2014.

Sarah Wheeler,

RAC Coordinator, Idaho Falls District.

[FR Doc. 2014–18039 Filed 7–30–14; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–14XL1116AF: HAG14–0170]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 2 S., R. 7 E., accepted July 9, 2014
T. 14 S., R. 16 E., accepted July 9, 2014
T. 32 S., R. 4 W., accepted July 9, 2014

Washington

T. 33 N., R. 44 E., accepted July 9, 2014

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2014–18014 Filed 7–30–14; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Noise Cancelling Headphones and Components Thereof, DN 3024;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

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 United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] 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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Bose Corporation on July 25, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 noise cancelling headphones and components thereof. The complaint names as respondents Beats Electronics, LLC of Culver City, CA; Beats Electronics International Ltd. of Ireland; Fugang Electronic (Dong Guan) Co., Ltd. of China and PCH International Ltd. of Ireland. The complainant requests that the Commission issue a permanent limited exclusion order, permanent cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

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 docket number (''Docket No. 3024'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*.)[4] 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. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 25, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17991 Filed 7–30–14; 8:45 am]

BILLING CODE 7020–02–P

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 28, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *United States of America et al.* v. *East Bay Municipal Utility District et al.,* Consolidated Civil Action Nos. C 09–00186 and 09–05684.

The United States of America and the People of the State of California ex rel. California State Water Resources Control Board and California Regional Water Quality Control Board, San Francisco Bay Region (together ''Water Boards''), and Plaintiff-Intervenors San Francisco Baykeeper (''Baykeeper'') and Our Children's Earth Foundation (''Our Children's Earth''), brought claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. § 1251, *et seq.,* against East Bay Municipal Utility District (''EBMUD'') and seven municipal defendants, including the City of Alameda, the City of Albany, the City of Berkeley, the City of Emeryville, the City of Oakland, the City of Piedmont and the Stege Sanitary District (together ''Satellite Communities'').

The United States, the Water Boards, Baykeeper and Our Children's Earth allege that (1) EBMUD is in violation of the Clean Water Act and its National Pollutant Discharge Elimination System (''NPDES'') permit because it discharges from three wet weather facilities that have been prohibited since 2009; (2) the Satellite Communities are in violation of the Act and the operation and maintenance provisions of their NPDES permits because they contribute excessive flow to collection and treatment systems owned and operated by EBMUD, which causes EBMUD to

discharge from the wet weather facilities; and (3) all defendants are in violation of the Clean Water Act and their NPDES permits because they have unlawful sanitary sewer overflows (''SSOs'') during wet weather.

The proposed Consent Decree implements a regional asset management program that puts the defendants on a path to eliminate prohibited wet weather facility discharges by December 31, 2035, and to control SSOs within ten years of Decree entry. Among other things, the defendants will rehabilitate and clean sanitary sewer infrastructure, identify and eliminate sources of inflow and rapid infiltration to the sewer systems, and continue to require repair or replacement of private sewer laterals under local and regional ordinances.

In addition, each defendant will pay a civil penalty for its past violations, for a total of $1,563,556 in civil penalties. EBMUD will pay $201,600; the City of Alameda will pay $111,150; the City of Albany will pay $42,038; the City of Berkeley will pay $267,000; the City of Emeryville will pay $1,870; the City of Oakland will pay $850,000; the City of Piedmont will pay $41,038; and the Stege Sanitary District will pay $48,860.

The proposed Consent Decree replaces a January 2009 interim settlement with EBMUD and a March 2011 interim settlement with the Satellite Communities.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America et al.* v. *East Bay Municipal Utility District et al.,* D.J. Ref. No. 90–5–1–1–09361. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $54.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–18047 Filed 7–30–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Joint Stipulation under the Clean Water Act

On July 25, 2014, the Department of Justice lodged a proposed settlement with the United States District Court for the District of Alaska in the lawsuit entitled *United States and Alaska* v. *BP (Exploration) Alaska, Inc.,* Civil Action No. 3:14–cv–00146.

The United States and State of Alaska filed this lawsuit under the Clean Water Act against BP (Exploration) Alaska, Inc. The complaint seeks civil penalties and injunctive relief for violations of the Clean Water Act, as amended by the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq., and Alaska Statutes 46.03.710 and 46.03.740. The settlement provides a covenant not to sue in return for defendant's payment of $450,000.

The publication of this notice opens a period for public comment on the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Alaska* v. *BP (Exploration) Alaska, Inc.,* D.J. Ref. No. 90–5–1–1–08808/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the settlement may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the settlement 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 $3 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–17980 Filed 7–30–14; 8:45 am]

BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2014–0181]

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and final finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–31 and DPR–41 issued to Florida Power & Light Company (FPL, the licensee) for operation of Turkey Point Nuclear Generating Unit Nos. 3 and 4 (Turkey Point) located in Homestead, Miami-Dade County, Florida. The proposed amendments would increase the ultimate heat sink (UHS) water temperature limit specified in the Turkey Point Technical Specifications (TSs) from 100 degrees Fahrenheit (°F) to 104 °F and add a surveillance requirement to monitor the UHS temperature more frequently if the UHS temperature approaches the new limit. The NRC did not identify any significant environmental impacts associated with the proposed license amendments based on its evaluation of the information provided in the licensee's application and other available information. Accordingly, the NRC has prepared this Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI) for the proposed license amendments.

ADDRESSES: Please refer to Docket ID NRC–2014–0181 when contacting the NRC about the availability of information regarding this document. You may access publicly available

information related to this document using any of the following methods:

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0181. 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.

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• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Audrey L. Klett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0489; email: *Audrey.Klett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–31 and DPR–41 issued to FPL for operation of Turkey Point, located in Homestead, Miami-Dade County, Florida. As required by § 51.21 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 51.21), the NRC staff performed an EA to document its findings related to the proposed license amendments. FPL submitted its license amendment request by letter dated July 10, 2014 (ADAMS Accession No. ML14196A006) and subsequently supplemented its application by letters dated July 17, 2014 (ADAMS Accession No. ML14202A392), July 22, 2014 (ADAMS Accession Nos. ML14204A367 and ML14204A368), and July 24, 2014 (ADAMS Accession No. ML14206A853). Based on information provided in FPL's application and associated supplements, the NRC staff's independent review, and the NRC's consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973, as amended (ESA), the NRC did not identify any significant environmental impacts associated with the proposed license amendments.

Based on the results of the EA documented herein, the NRC is issuing this final FONSI, in accordance with 10 CFR 51.32, for the proposed license amendments.

II. Environmental Assessment

Plant Site and Environs

The Turkey Point site encompasses 11,000 acres (ac) (4,450 hectares (ha)) in Miami-Dade County, Florida. The site lies 25 miles (mi) (40 kilometers [km]) south of Miami, Florida, and the nearest city limits are Florida City, which lies 8 mi (13 km) to the west, Homestead, which lies 4.5 mi (7 km) to the northwest, and Key Largo, which lies 10 mi (16 km) south of the Turkey Point site. The Turkey Point site is bordered to the east by Biscayne National Park, to the north by Homestead Bayfront Park and a portion of Biscayne National Park, and on the west and south by FPL's 13,000-ac (5,260-ha) Everglades Mitigation Bank. The Turkey Point site includes five electric generating units. Units 1, 2, and 5 are fossil-fueled generating units and are not covered by the proposed licensing action; Units 3 and 4 are nuclear generating units. Each nuclear reactor is a Westinghouse pressurized light-water reactor that generates electricity via three steam generators that produce steam that turns turbines. The site features a 6,100-ac (2,500-ha) closed cooling canal system (CCS) that cools heated water discharged by Units 1 through 4. Unit 5 uses mechanical draft cooling towers for cooling, draws makeup water from the Upper Floridan Aquifer, and discharges blowdown to the CCS. The five units and supporting equipment (excluding the CCS) occupy approximately 130 ac (53 ha).

The U.S. Atomic Energy Commission (AEC), the NRC's predecessor agency, and the NRC have previously conducted environmental reviews of Turkey Point in several documents, and the descriptions therein continue to accurately depict the Turkey Point site and environs. Those documents include the AEC's July 1972 Final Environmental Statement (FES); the NRC's January 2002 Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Turkey Point Units 3 and 4—Final Report (NUREG–1437, Supplement 5) (ADAMS Accession No. ML020280236); and the NRC's March 2012 environmental assessment and final FONSI for the Turkey Point extended power uprate (EPU) (ADAMS Accession No. ML12074A251).

Identification of the Proposed Action

The proposed action would increase the UHS water temperature limit specified in the Turkey Point TSs and add a surveillance requirement to monitor the UHS temperature more frequently if the UHS temperature approaches the new limit. The proposed action is in accordance with the licensee's application dated July 10, 2014, as supplemented by letters dated July 17, July 22 (two letters), and July 24, 2014.

More specifically, the proposed action would amend Appendix A of Turkey Point's Renewed Facility Operating Licenses in order to revise the UHS temperature limit set forth in TS Limiting Operating Condition (LOC) 3/4.7.4 from 100 °F to 104 °F. The CCS serves as the UHS for the Intake Cooling Water (ICW) system and provides the coolant for the Circulating Water (CW) system. The CW system provides cooling water to the main plant condensers, and the ICW system removes heat loads from the Component Cooling Water (CCW) system during normal and accident conditions to support both reactor and containment heat removal requirements as well as spent fuel cooling requirements.

Currently, TS LOC 3/4.7.4 includes a Surveillance Requirement (SR) that necessitates the licensee to verify the UHS (CCS) temperature once every 24-hour period and confirm that the average supply water temperature is within the 100 °F limit. The proposed license amendments would modify the SR to require the licensee to verify the average supply water temperature to be within the new TS limit at least once per 24 hours, and once per hour when the water temperature exceeds 100 °F. FPL monitors the UHS (CCS) temperature at a point in the ICW system piping going into the inlet of the CCW Heat Exchangers.

The license amendment would require the licensee to place both units in at least hot standby within 12 hours and cold shutdown within the next 30 hours if the UHS exceeds 104 °F.

The proposed TS revisions would not result in or require any physical changes to Turkey Point systems, structures, or components, including those intended for the prevention of accidents. If

approved, the LAR would be effective from the date of NRC approval through the expiration dates of the renewed facility operating licenses (i.e., through 2032 for Unit 3 and 2033 for Unit 4).

The Need for the Proposed Action

The proposed action is needed to provide FPL with additional operational flexibility during periods when high air temperatures, low rainfall, and other factors contribute to conditions resulting in a UHS temperature in excess of 100 °F that would otherwise necessitate FPL to place Turkey Point in cold shutdown. In its application, FPL states that loss of load and voltage control resulting from shutdown during periods of high summer demand could result in impacts to grid reliability. UHS temperatures have recently approached and exceeded the 100 °F TS limit on several occasions. On July 20, 2014, the NRC approved a notice of enforcement discretion (NOED), which allows the UHS temperature to exceed 100 °F up to 103 °F for a period of no more than 10 days, as well as several other NOED exit criteria. The NRC documented the NOED in a letter to FPL dated July 23, 2014 (ADAMS Accession No. ML14204A652).

Environmental Impacts of the Proposed Action

As part of the original licensing review for Turkey Point, the AEC published an FES in July 1972 that evaluates potential environmental impacts associated with the operation of Turkey Point over its initial 40-year operating period (1972–2012 for Unit 3 and 1973–2013 for Unit 4). In 2002, the NRC evaluated the environmental impacts of operating Turkey Point for an additional 20 years beyond the original operating license (i.e., through 2032 for Unit 3 and 2033 for Unit 4) and predicted that the environmental impacts of license renewal were small for all environmental resources. NUREG–1437, Supplement 5 provides that assessment. In 2012, the NRC evaluated the impacts of a then-proposed EPU at Turkey Point that authorized the facility to increase the maximum power level from 2300 megawatts thermal (MWt) to 2644 MWt for each unit. The NRC's March 2012 EA and final FONSI provide that assessment.

As previously discussed, the proposed action would not result in or require any physical changes to Turkey Point systems, structures, or components, including those intended for the prevention of accidents. Further, the proposed license amendments involve TS changes that would only result in changes in procedural and operational aspects undertaken by FPL personnel for monitoring and maintaining the UHS temperature limit as measured at the ICW system piping going into the inlet of the CCW Heat Exchangers. Thus, FPL's workforce would not change, and the regular operations workforce would otherwise be unaffected by the proposed action. Based on the above and the available information reviewed by the staff, the NRC concludes that the proposed action would result in no significant impact on land use, visual resources, air quality, noise, the geologic environment, groundwater resources, terrestrial resources, historic and cultural resources, socioeconomic conditions including minority and low income populations (environmental justice), or waste generation and management activities. Therefore, this environmental assessment does not prevent any further evaluation of the operational impacts on these environmental resources. The NRC previously assessed the environmental impacts of continued operations of Turkey Point in NUREG–1437, Supplement 5 and the EA and final FONSI for the EPU, and implementation of the proposed license amendments would not result in any impacts beyond those already characterized in these documents. Accordingly, this environmental assessment focuses on the environmental resources that could be affected by the change in the CCS thermal limit: Surface water resources, aquatic resources, and Federally-protected species and habitats. Radiological impacts are also addressed.

The details of the NRC staff's safety evaluation will be separately provided in the license amendment package issued to approve the license amendment, if granted.

Nonradiological Impacts

Surface Water Resources

The Turkey Point site lies on the shore of Biscayne Bay. South of the site, Mangrove Point divides the bay from Card Sound. Biscayne Bay and Card Sound are shallow, subtropical estuarine waters located between the Atlantic coast mainland and a grouping of barrier islands that form the northernmost Florida Keys. The Atlantic Ocean lies beyond the barrier islands. The Intracoastal Waterway traverses Biscayne Bay and Card Sound, and a barge passage runs from the Intracoastal Waterway to the non-nuclear units on the Turkey Point site.

In addition to these offsite waters, the site includes several manmade surface waters, the most significant of which is the CCS. The CCS spans a 6,100-ac (2,500-ha) area (4,370 ac (1,770 ha) of surface water) spread over a 5-mi by 2-mi (8-km by 3.2-km) area. The system includes 168 mi (270 km) of earthen canals with an average depth of 2.8 ft (0.8 km) and contains approximately 4 billion gallons (12,300 acre-feet) of water. The Turkey Point units (both nuclear Units 3 and 4 and fossil-fueled Units 1 and 2) use the CCS like a radiator and, as previously mentioned, the CCS serves as the UHS for Units 3 and 4. Heated water discharges into the CCS at one end, flows through the canal system, and is withdrawn from the other end for reuse as cooling water. The heated discharge effluent is distributed to 32 feeder canals. Water in the feeder canals flows south and discharges into a single collector canal that distributes water to six return canals. Water in the return canals flows north to the plant intake. The entire circuit that water travels from plant discharge back to plant intake is 13.2 mi (21.2 km), and transit time through the system is approximately 44 hours. Water flows attributable to Units 3 and 4 amount to approximately 1.0 million gallons per minute. Temperature rise across the plant (from intake to discharge) averages 15 to 30 °F depending on the number of fossil and nuclear units in operation, unit load, and various other factors. The average intake temperature is 2.5 °F above the average ambient air temperature. Rainfall, stormwater runoff, and groundwater exchange replace evaporative losses.

The Florida Department of Environmental Protection (FDEP) has issued FPL a ''No Discharge'' National Pollutant Discharge Elimination System (NPDES) permit (No. FL0001562) to operate the CCS as an industrial wastewater facility. Accordingly, the CCS does not discharge directly to fresh or marine surface waters. The proposed action would not require FPL to request modifications to the NPDES permit because the plant discharge limits would not change. Plant discharge limits are not intake-temperature limited; rather, they are a function of the quantity of heat rejected to the CCS during plant operation.

Under the proposed action, the CCS could experience temperatures between 100 °F and 104 °F at the TS monitoring location near the north end of the system for short durations during periods of peak summer air temperatures and low rainfall. Such conditions may not be experienced at all depending on site and weather conditions. Temperature increases would also increase CCS water

evaporation rates and result in higher salinity levels. This effect would also be temporary and short in duration because salinity would again decrease upon natural freshwater recharge of the system (i.e., through rainfall, stormwater runoff, and groundwater exchange). No other onsite or offsite waters would be affected by the proposed UHS temperature limit increase.

Because the proposed action would only affect the CCS, and the CCS is a manmade closed cycle cooling system, the NRC concludes that the proposed action would not result in significant impacts to surface water resources.

Aquatic Resources

As determined in the previous section, the CCS is the only surface water that would be affected by the proposed action. Accordingly, this section only addresses aquatic resources in the CCS.

The CCS supports a variety of aquatic species typical of shallow, subtropical waters, including phytoplankton, zooplankton, marine algae, rooted plants, crabs, and estuarine fish. Because of high water temperatures and salinity content of the CCS, the resident fish assemblage is dominated by species adapted to living in harsh conditions, such as sheepshead minnow (*Cyprinodon variegatus*) and several *Fundulus* species. The CCS is owner-controlled and closed to the public; thus, fish and other aquatic biota in the CCS do not carry any commercial or recreational value.

Because aquatic organisms in the cooling canal system are unable to travel to or from Biscayne Bay, Card Sound, or any other natural water body, changes to the conditions within the CCS would not affect any aquatic populations in the surrounding natural aquatic habitats of Biscayne Bay, Card Sound, or the Atlantic Ocean. Therefore, the NRC staff concludes that the proposed action would result in no significant impact to aquatic resources.

Federally Protected Species and Habitats

The Turkey Point site is home to a resident population of Federally-threatened American crocodiles (*Crocodylus acutus*). Crocodiles discovered and colonized the Turkey Point CCS following plant construction in the 1970s, and the site now hosts approximately one-third to one-half of the United States breeding population. In 1977, the FWS designated an area of Florida that includes the majority of the Turkey Point site (including the CCS) as critical habitat for the species under the ESA. FPL maintains a crocodile management plan that prescribes how CCS maintenance procedures shall be conducted to minimize nest, hatchling, or adult disturbance. FPL also maintains a crocodile monitoring program to document breeding success and survival on the site.

As a Federal agency, the NRC must comply with the ESA as part of any action it authorizes, funds, or carries out, such as the proposed action evaluated in this environmental assessment. Under ESA section 7, the NRC must consult with the FWS and the National Marine Fisheries Service, as appropriate, to ensure that the proposed agency action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. The ESA and the regulations that implement ESA section 7 (50 CFR Part 402) describe the consultation process that Federal agencies must follow in support of agency actions.

Based on a review of the proposed action, the NRC staff has determined that the American crocodile is the only Federally-listed species that has the potential to be affected by the proposed action. Pursuant to ESA section 7, NRC staff consulted with FWS staff at the South Florida Ecological Services Office in Vero Beach, Florida. The NRC staff prepared a biological assessment (ADAMS Accession No. ML14206A806) that considers the potential for the proposed action to reduce hatchling survival, alter crocodile growth rates, and reduce habitat availability and concludes that the proposed action is not likely to adversely affect the American crocodile and would have no effect on the species' designated critical habitat. Based on the NRC staff's biological assessment determinations, the NRC concludes that the proposed action would have no significant impact on Federally-protected species or habitats.

In a July 25, 2014, letter (ADAMS Accession No. ML14206A800) to FWS, the NRC requested ESA section 7 consultation.

Radiological Impacts

The proposed action would not result in or require any physical changes to Turkey Point systems, structures, or components, including those intended for the prevention of accidents because the proposed license amendments involve TS changes that would only result in changes in procedural and operational aspects undertaken by FPL personnel for monitoring and maintaining the increased allowable UHS temperature limit. Thus, the proposed action would not have a significant adverse effect on the probability of an accident occurring or result in an increased radiological hazard beyond those analyzed in the licensee's Updated Final Safety Analysis Report. The proposed action would result in no changes to radiation levels or the types or quantities of radioactive effluents (gaseous or liquid) that affect radiation exposures to members of the public or plant workers. No changes or different types of radiological impacts would be expected from the proposed action. Therefore, the radiological impacts of granting the license amendments would result in no significant impact on the radiological environment.

Cumulative Impacts

The Council on Environmental Quality defines cumulative impacts under the National Environmental Policy Act of 1969, as amended (NEPA) as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR Part 1508.7). For the purposes of this analysis, past actions are related to the resource conditions when Turkey Point was licensed and constructed; present actions are related to the resource conditions during current operations; and future actions are those that are reasonably foreseeable through the expiration of Turkey Point's renewed facility operating licenses. In the preceding sections of this EA, the NRC has determined that the proposed action has the potential to only affect surface water resources and aquatic resources in the CCS and Federally protected species and habitats (i.e., the site's resident population of American crocodiles and its designated critical habitat). This EA also addresses radiological impacts of the proposed action. Accordingly, this section only addresses the cumulative impacts that could result from the proposed action and other actions on these resources. The proposed action would have no effect on the remaining resources (i.e., land use, visual resources, air quality, noise, the geologic environment, groundwater resources, terrestrial resources, historic and cultural resources, socioeconomic conditions including minority and low income populations (environmental justice), and waste generation and management activities), and thus, cumulative impacts would not occur for these environmental resources.

The NRC staff has identified several actions that may contribute to cumulative effects; each of these actions is described separately below.

CCS Chemical Treatments

In 2011, FPL began to notice increased blue green algae concentrations in the CCS. The concentrations have steadily increased since that time. FPL has performed engineering and environmental analyses and believes that the presence of higher than normal CCS algae concentrations may be diminishing the CCS's heat transfer capabilities. FPL developed a plan to gradually reduce algae concentrations through controlled chemical treatment of the CCS over the course of several weeks. On June 18, 2014, FPL submitted a request to the FDEP to approve the use of copper sulfate, hydrogen peroxide, and a bio-stimulant to treat the algae (letter contained in Appendix A of ADAMS Accession No. ML14206A806). On June 27, 2014, the FDEP approved FPL's treatment plan for a 90-day trial period (letter contained in Appendix A of ADAMS Accession No. ML14206A806). The FDEP requested that during the 90-day treatment period, FPL monitor the CCS for total recoverable copper and dissolved oxygen and submit its results to the FDEP. The FDEP also recommended that FPL coordinate with the Florida Fish and Wildlife Conservation Commission (FWC) due to the presence of crocodiles in the cooling system. The FWC provided its comments on FPL's treatment plan in a letter dated July 1, 2014 (letter contained in Appendix A of ADAMS Accession No. ML14206A806).

The CCS chemical treatments have the potential to contribute to cumulative effects on CCS surface water resources, CCS aquatic resources, and the American crocodile. Because the CCS is a manmade closed cycle cooling system, treatment of the CCS is not likely to have a significant cumulative effect on surface water resources. Monitoring required by the FDEP will ensure adequate water quality throughout and following treatment. Monitoring will also ensure that any unanticipated effects on the aquatic organisms that inhabit the CCS are appropriately addressed. During the treatment period, FPL has agreed to report any potentially related fish kills in the CCS to the FWC. No fish kills have been reported to date. Regarding crocodiles, the NRC's July 25, 2014, biological assessment notes that FPL has not observed any behavioral or distributional changes or any other noticeable differences that would indicate effects to crocodiles resulting from either the presence of higher algae concentrations or the recent chemical treatments.

Aquifer Withdrawals

The CCS is situated above two aquifers: the shallower saltwater Biscayne Aquifer and the deeper brackish Floridan Aquifer. A confining layer separates the two aquifers from one another. Turkey Point, Unit 5 uses the Floridan Aquifer for cooling water. The South Florida Water Management District (SFWMD) recently granted FPL approval to withdraw a portion (approximately 5 million gallons per day [MGD]) of the Unit 5 withdrawal allowance for use in the CCS. FPL began pumping Floridan Aquifer water into the CCS in early July. FPL has also received temporary approval to withdraw 30 MGD from the Biscayne Aquifer, though FPL has not yet used this allowance.

FPL also anticipates the FDEP to issue an Administrative Order requiring FPL to install up to six new wells that will pump approximately 14 MGD of water from the Floridan Aquifer into the CCS. Modeling performed by FPL consultants and the SFWMD indicates that in approximately 2 years, the withdrawals would reduce the salinity of the CCS to the equivalent of Biscayne Bay (about 34 parts per thousand [ppt]). Such withdrawals could also help moderate water temperatures.

The current and anticipated future aquifer withdrawals have the potential to contribute to cumulative effects on CCS surface water resources, CCS aquatic resources, and crocodiles. Because the CCS is a manmade closed cycle cooling system, aquifer withdrawals are not likely to have a significant cumulative effect on surface water resources. Aquifer withdrawals would result in beneficial impacts to CCS aquatic resources and the crocodiles inhabiting the Turkey Point site. FPL anticipates that the withdrawals will reduce the salinity of the CCS to about 34 ppt and could also help moderate CCS temperatures over the long term. Both of these effects would create favorable conditions for CCS aquatic biota and crocodiles, which are currently tolerating an unusually hot, hypersaline environment.

Turkey Point, Units 6 and 7 Construction and Operation

In June 2009, FPL submitted a combined license application (COLA) (ADAMS Accession No. ML091830589) to construct and operate two Westinghouse Advanced Passive 1000 (AP1000) pressurized-water reactors designated as Turkey Point, Units 6 and 7. Submission of the COLA does not commit FPL to build two new nuclear units and does not constitute approval of the proposal by the NRC; however, submission of the COLA infers that the construction and operation of the new units is a reasonably foreseeable future action. The COLA will be evaluated on its merits, and the NRC will decide whether to grant the licenses after considering and evaluating the environmental and safety implications of the proposal. Environmental impacts of constructing and operating Turkey Point, Units 6 and 7 will depend on their actual design characteristics, construction practices, and power plant operations. These impacts will be assessed by the NRC in a separate NEPA document. The cumulative impacts presented in this EA may differ from those impacts assessed for the COLA. Potential impacts presented below have been drawn from FPL's Turkey Point, Units 6 and 7 Environmental Report, Revision 5 (ADAMS Accession No. ML13357A435), and NRC's 2012 EA and final FONSI for the EPU.

Of the environmental resources affected by the proposed action, the possible construction and operation of Units 6 and 7 only have the potential to contribute to cumulative radiological impacts. Units 6 and 7 would not use the CCS for cooling. Rather, Units 6 and 7 would have a closed-cycle cooling system with mechanical draft cooling towers. The cooling towers would draw makeup from Miami-Dade Water and Sewer Department reclaimed water and would discharge blowdown into deep injection wells. Saltwater extracted from Biscayne Bay subsurface sediment through radial collector wells proposed to be built on the Turkey Point site would serve as a secondary source of makeup water when a sufficient quantity and/or quality of reclaimed water is not available. Because Units 6 and 7 would not use the CCS, the proposed new units would not have a cumulative effect on CCS surface water resources or CCS aquatic resources.

Regarding crocodiles, potential impacts to this species and its critical habitat will be addressed in a future ESA section 7 consultation between the NRC and FWS. When considering cumulative impacts on Federally listed species, the ESA's implementing regulations direct Federal agencies to consider the effects of future State or private activities, *not involving Federal activities,* that are reasonably certain to occur within the action area of the Federal action subject to consultation (50 CFR part 402.02; emphasis added). Accordingly, the NRC will not address cumulative impacts of Units 6 and 7 on

the American crocodile in this EA because the NRC's issuance of a license to construct and operate Units 6 and 7 is a separate Federal activity that will require future consultation.

Regarding cumulative radiological impacts, the NRC and Environmental Protection Agency have developed radiological dose limits for protection of the public and workers that address the cumulative effects of acute and long-term exposure to radiation and radioactive material. These dose limits are specified in 10 CFR part 20 and 40 CFR part 190.

The cumulative radiation dose to the public and workers is required to be within the regulations cited above. The public dose limit of 25 millirem (0.25 millisieverts) in 40 CFR part 190 applies to all reactors that may be on a site and also includes any other nearby nuclear power reactor facilities. The NRC staff reviewed several years of radiation dose data contained in the licensee's annual radioactive effluent release reports for Turkey Point, and the data demonstrate that the dose to members of the public from radioactive effluents is within the limits of 10 CFR part 20 and 40 CFR part 190. As previously indicated in the ''Radiological Impacts'' section of this environmental assessment, the proposed action would result in no changes to radiation levels or the types or quantities of radioactive effluents (gaseous or liquid) that affect radiation exposures to plant workers and members of the public.

FPL's COLA for Units 6 and 7 contains an assessment of the radiation doses to members of the public from the proposed new reactors and concludes that doses would be within regulatory limits. The staff expects continued compliance with regulatory dose limits during operation of Turkey Point, Units 3 and 4 under the proposed action. Therefore, the NRC staff concludes that the cumulative radiological impacts to members of the public that could result from the combined operations of Turkey Point, Units 3 and 4 and the proposed new Units 6 and 7 would result in no significant impact on the environment.

Regarding radiation dose to workers, cumulative dose would only be applicable for those workers that would be engaged at both facilities (i.e., the currently operating Units 3 and 4 and proposed new Units 6 and 7). For Units 3 and 4, the licensee has a radiation protection program that maintains worker doses within the dose limits in 10 CFR part 20 during all phases of operations. Operation of Units 6 and 7 would require a similar radiation protection program, and the licensee would be responsible for ensuring that workers are not exposed to dose limits above those specified in 10 CFR part 20. Therefore, the NRC staff concludes that the cumulative radiological impacts to plant workers that could result from the combined operations of Turkey Point, Units 3 and 4 and the proposed new Units 6 and 7 would result in no significant impact on the radiological environment.

Cumulative Impacts Conclusion

The NRC staff considered the cumulative impacts of CCS chemical treatments, current and anticipated future aquifer withdrawals, and the possible future construction and operation of two new nuclear units on the Turkey Point site. Based on the information presented in this section, the NRC staff concludes that the proposed action, in combination with other cumulative actions, would result in no significant cumulative impacts on the environment.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed license amendments (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental conditions or impacts. However, denial would result in reduced operational flexibility and could require FPL to derate or shutdown Turkey Point if the UHS average supply water temperature approaches or exceeds the 100 °F TS limit. In its application, FPL states that loss of load and voltage control resulting from such a shutdown during periods of high summer demand could result in impacts to grid reliability.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in NUREG–1437, Supplement 5 prepared for license renewal of Turkey Point.

Agencies and Persons Consulted

On July 28, 2014, the NRC staff notified the Florida State official, Ms. Cindy Becker, Chief of Bureau of Radiation Control, of the Florida Department of Health, regarding the environmental impacts of the proposed action. The State official had no comments.

The NRC staff also coordinated with the FWS pursuant to consultation under ESA section 7 during the staff's review of the proposed action. The consultation is further discussed under the ''Federally-Protected Species'' section of this environmental assessment.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Renewed Facility Operating License Nos. DPR–31 and DPR–41, issued to FPL for operation of Turkey Point to increase the UHS water temperature limit specified in the Turkey Point TSs from 100 °F to 104 °F and add an SR to monitor the UHS temperature more frequently if the UHS temperature approaches the new limit.

On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC concludes that the proposed action would not have significant effects on the quality of the human environment. The proposed action would result in no significant impacts on surface water resources, aquatic resources, or the radiological environment. In addition, the proposed action is not likely to adversely affect any Federally-protected species or affect any designated critical habitat. The proposed action would also not result in significant cumulative impacts on any environmental resources. The NRC's evaluation considered information provided in the licensee's application and associated supplements; the NRC's staff independent review of other environmental documents, and coordination with the FWS pursuant to consultation under ESA section 7. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its findings, the NRC has decided not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as described previously.

Document	Adams Accession No.
Documents Related to License Amendment Request	
Florida Power & Light Company. License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit. Dated July 10, 2014.	ML14196A006
Florida Power & Light Company. License Amendment Request No. 231, Application to Revise Ultimate Heat Sink Temperature Limit—Request for Emergency Approval. Dated July 17, 2014.	ML14202A392
U.S. Nuclear Regulatory Commission. Turkey Point 3 and 4 Request for Additional Information—LAR231 (TAC MF4392 and MF4393). [1 of 2] Dated July 18, 2014.	ML14203A614
U.S. Nuclear Regulatory Commission. Turkey Point 3 and 4 Request for Additional Information—LAR231 (TAC MF4392 and MF4393). [2 of 2] Dated July 18, 2014.	ML14203A618
Florida Power & Light Company. License Amendment Request No. 231, Application to Revise Ultimate Heat Sink Temperature Limit—Supplement 1, and Response to Request for Additional Information. Dated July 22, 2014.	ML14204A367
Florida Power & Light Company. Response to Request for Additional Information Regarding License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit. Dated July 22, 2014.	ML14204A368
U.S. Nuclear Regulatory Commission. Turkey Point 3 and 4 Request for Additional Information—LAR231 (TAC MF4392 and MF4393). Dated July 22, 2014.	ML14204A814
U.S. Nuclear Regulatory Commission. Notice of Enforcement Discretion for Florida Power & Light Company Regarding Turkey Point Nuclear Generating Unit Nos. 3 and 4 [NOED NO. 14–2–001]. Dated July 23, 2014.	ML14204A652
Florida Power & Light Company. Response to Containment and Ventilation Branch Request for Additional Information, Regarding License Amendment Request No. 231, Application to Revise Ultimate Heat Temperature Limit. Dated July 24, 2014.	ML14206A853
Florida Power & Light Company. Turkey Point Nuclear Generating Unit Nos. 3 and 4—Individual Notice of Consideration of Issuance of Amendments to Renewed Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing (Exigent Circumstances) (TAC Nos. MF4392 and MF4293). Dated July 24, 2014.	ML14204A129 (letter) ML14199A111 (enclosure)
U.S. Nuclear Regulatory Commission. Request to Reinitiate Informal Consultation for a Proposed License Amendment to Increase the Ultimate Heat Sink Temperature Limit at Turkey Point Nuclear Generating Unit Nos. 3 and 4. Dated July 25, 2014.	ML14206A800
U.S. Nuclear Regulatory Commission. Biological Assessment on the American Crocodile (*Crocodylus acutus*) for Turkey Point Nuclear Generating Unit Nos. 3 and 4 Proposed License Amendment to Increase the Ultimate Heat Sink Temperature Limit. Dated July 25, 2014.	ML14206A806
Other Referenced Documents	
U.S. Nuclear Regulatory Commission. Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Turkey Point Units 3 and 4—Final Report (NUREG–1437, Supplement 5). Dated January 28, 2002.	ML020280236
Florida Power & Light Company. Proposed Turkey Point Units 6 & 7, Project No. 763, Application for Combined License for Turkey Point Units 6 and 7. Dated June 30, 2009.	ML091830589
U.S. Nuclear Regulatory Commission. Final Environmental Assessment and Finding of No Significant Impact Related to a License Amendment To Increase the Maximum Reactor Power Level, Florida Power & Light Company; Turkey Point, Units 3 and 4. Dated March 27, 2012.	ML12074A251
Florida Power & Light Company. Turkey Point Units 6 & 7 Combine License Application, Part 3: Environmental Report, Revision 5. Dated December 23, 2013.	ML13357A435
Florida Power & Light Company. Turkey Point Units 3 and 4; Wastewater Permit FL0001563; Request for Approval for the Use of Copper Sulfate, Hydrogen Peroxide, and a Bio-Stimulant in the Treatment and Control of Blue Green Algae in the Cooling Canal System. Dated June 18, 2014.	ML14206A806 *
Florida Department of Environmental Protection. Re: Florida Power & Light, Turkey Point, NPDES Permit FL0001562, 90-Day Trial Approval. Dated June 27, 2014.	ML14206A806 *
Florida Fish and Wildlife Conservation Commission. Re: Florida Power & Light, Turkey Point Plant Maintenance Activity, NPDES Permit FL0001562, Miami-Dade County. Dated July 1, 2014.	ML14206A806 *

* (See Appendix A.)

Dated at Rockville, Maryland, this 28th day of July 2014.

For the Nuclear Regulatory Commission.

Lisa M. Regner,

Acting Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–18159 Filed 7–30–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9091–MLA; ASLBP No. 12–915–01–MLA–BD01]

Atomic Safety and Licensing Board Panel; In the Matter of Strata Energy, Inc. (Ross In Situ Recovery Uranium Project); Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Dr. Richard F. Cole, Dr. Craig M. White; Notice of Hearing (Notice of Evidentiary Hearing and Opportunity To Provide Oral and Written Limited Appearance Statements)

July 25, 2014.

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits in this proceeding regarding the January 2011 application of Strata Energy, Inc., (SEI) for authorization to possess and use Atomic Energy Act section 11.z source and AEA section 11.e(2) byproduct materials pursuant to 10 CFR part 40 in the operation of SEI's proposed Ross In Situ Recovery Uranium Project site in Crook County, Wyoming.[1] The evidentiary hearing will concern environmental matters relating to the proposed issuance of the requested license. In addition, the Board gives notice that, in accordance with 10 CFR 2.315(a), it will entertain oral and written limited appearance statements from members of the public in connection with this proceeding.

A. Matters To Be Considered

As set forth by the Licensing Board in its May 2014 issuance ruling on a motion by the Joint Intervenors [2] to admit new and amended contentions following the Nuclear Regulatory Commission (NRC) staff's February 2014 issuance of its final supplement to the agency's generic environmental impact statement (FEIS) on in situ recovery (ISR) projects intended to provide the staff's National Environmental Policy Act (NEPA)-mandated assessment of the SEI license application,[3] the three contentions currently admitted in this proceeding are as follows:

Environmental Contention 1: The FSEIS fails to adequately characterize baseline (i.e., original or pre-mining) groundwater quality.

Environmental Contention 2: The FSEIS fails to analyze the environmental impacts that will occur if the applicant cannot restore groundwater to primary or secondary limits.

Environmental Contention 3: The FSEIS fails to include adequate hydrological information to demonstrate SEI's ability to contain groundwater fluid migration.

Subject to the outcome of a pending party dispositive motion regarding environmental contention 1,[4] these issue statements will be the subject matter of the evidentiary hearing and should be the focus of any limited appearance statements.[5]

B. Date, Time, and Location of Evidentiary Hearing

The Board will convene a simplified evidentiary hearing conducted in accord with the procedures set forth in 10 CFR part 2, Subpart L, regarding the environmental matters set specified in section A above on the following date at the specified location and time:

Date: Tuesday, September 30, 2014.

Time: 9:30 a.m. Mountain Time (MT).

Location: Wyoming Meeting Room, Energy Hall, Cam-Plex Multi-Event Facilities, 1635 Reata Dr., Gillette, Wyoming.

The hearing will continue from day-to-day until concluded. SEI, the NRC staff, and Joint Intervenors will be parties to the hearing and will sponsor witnesses and evidentiary material.

Any member of the public who plans to attend the hearing is advised that security measures may be employed at the entrance to the room housing the hearing, including searches of hand-carried items such as briefcases or backpacks, and is reminded to arrive in sufficient time to allow for security screening. Items that could readily be used as weapons will not be permitted in the room where the evidentiary hearing sessions will be held. Also, during the evidentiary hearing sessions, no signs will be permitted in the hearing room.

C. Date, Time, and Location of Oral Limited Appearance Statement Session

A 10 CFR 2.315(a) oral limited appearance session regarding the Ross ISR facility proceeding will be held on the following date at the specified location and time:

Date: Sunday, September 28, 2014 (if there is sufficient interest).

Time: 3:00 p.m. to 6:00 p.m. MT.

Location: Sundance Community Meeting Room, Crook County Courthouse Basement, 309 Cleveland St., Sundance, Wyoming.

D. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to this proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to the proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Licensing Board and/or the parties in their consideration of the issues in this proceeding.

Oral limited appearance statements will be entertained during the hours specified in section C above, or such lesser time as may be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed in section C above. The Board also reserves the right to cancel the Sunday afternoon session scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

Any member of the public who plans to attend the limited appearance session is strongly advised to arrive early to allow time to pass through any security measures that may be employed. Attendees are also requested not to

[1] As outlined by the Commission in its decision in *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI–03–15, 58 NRC 349 (2003), section 11.e(2) byproduct material is that material, as defined by AEA section 11.e(2), 42 U.S.C. 2014e(2), that is ''the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.'' This byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford the NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites. *See Sequoyah Fuels,* CLI–03–15, 58 NRC at 353–54.

[2] Joint Intervenors are the Natural Resources Defense Council and the Powder River Basin Resource Council.

[3] *See* Licensing Board Memorandum and Order (Ruling on Motion to Migrate/Amend Existing Contentions and Admit New Contentions Regarding Final Supplement to Generic Environmental Impact Statement) (May 23, 2014) (unpublished); *see also* Office of Federal and State Materials and Environmental Management Programs, NRC, [EIS] for the Ross ISR Project in Crook County, Wyoming; Supplement to the Generic [EIS] for *In-Situ* Leach Uranium Milling Facilities, NUREG–1910 (supp. 5 Feb. 2014) (ADAMS Accession No. ML14056A096).

[4] [Joint Intervenors'] Motion for Summary Disposition on Environmental Contention 1 (June 13, 2014).

[5] Although a fourth issue statement, environmental contention 4/5A, was admitted into this proceeding, in a July 25, 2014 ruling the Board dismissed that contention. *See* Licensing Board Memorandum and Order (Ruling on Summary Disposition Motion Regarding Environmental Contention 4/5A) (July 25, 2014) at 2 (unpublished).

bring any unnecessary hand-carried items, such as packages, briefcases, backpacks, or other items that might need to be examined individually. Items that could readily be used as weapons will not be permitted in the room where this session will be held. Also, during the oral limited appearance session, signs no larger than 18 inches by 18 inches will be permitted, but may not be attached to sticks, held over one's head, or moved about in the room.

The time allotted for each limited appearance statement normally will be no more than five minutes, but to ensure everyone will have an opportunity to speak, may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section E below and/or the number of persons present at the designated times.

E. Submitting a Request To Make an Oral Limited Appearance Statement

A person wishing to make an oral statement who has submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by email so as to be received by *5:00 p.m. Eastern Time (ET) on Friday, September 5, 2014.* Based on its review of the requests received by September 5, the Licensing Board may decide that the Sunday afternoon session will not be held due to a lack of adequate interest in that session.

Written requests to make an oral statement should be submitted to:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

Email: kathleen.schroeder@nrc.gov and *paul.bollwerk@nrc.gov*.

F. Submitting Written Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person not a party, or the representative of a party, to the proceeding may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the issues in this proceeding.

A written limited appearance statement may be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

Email: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

Email: paul.bollwerk@nrc.gov.

G. Availability of Documentary Information Regarding the Proceeding

The SEI license [6] and various staff documents relating to the application are available on the NRC Web site at *http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/ross.html*. These and other documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly-available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737 (available between 8:00 a.m. and 4:00 p.m., ET, Monday through Friday except federal holidays), or by email to *pdr@nrc.gov*.

H. Information Updates to Schedule

Any updates or revisions to the evidentiary hearing schedule or the schedule for limited appearance sessions can be found on the NRC Web site at *www.nrc.gov/public-involve/public-meetings/index.cfm,* or by calling (800) 368–5642, extension 5036 (available between 7:00 a.m. and 9:00 p.m. ET, Monday through Friday, except federal holidays), or by calling (301) 415–5036 (available seven days a week, twenty-four hours a day).

It is so ordered.

For the Atomic Safety and Licensing Board.

Rockville, Maryland.

Dated: July 25, 2014.

G. Paul Bollwerk, III,

Chairman, Administrative Judge.

[FR Doc. 2014–18051 Filed 7–30–14; 8:45 am]

BILLING CODE 7590–01–P

[6] On April 25, 2014, the staff notified the Board that, in accord with 10 CFR 2.1202(a), the SEI license had been issued, effective immediately. *See* Letter from Christopher C. Hair, NRC Staff Counsel, to Licensing Board (Apr. 25, 2014) at 1–2. Although section 2.1213(a) afforded Joint Intervenors the opportunity to seek a stay of this staff action, no such request was filed. Nonetheless, the SEI license is subject to any merits determination the Board might make relative to each of Joint Intervenors' pending contentions.

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008502; NRC–2014–0177]

License Exemption for Uranium One USA, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Temporary exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a temporary exemption from certain NRC financial assurance requirements to Uranium One USA, Inc., (Uranium One) in response to its annual financial assurance update for the Willow Creek uranium in-situ recovery (ISR) Project. Issuance of this temporary exemption will not remove the requirement for Uranium One to provide adequate financial assurance through an approved mechanism, but will allow the NRC staff to further evaluate whether the State of Wyoming's separate account provision for financial assurance instruments it holds is consistent with the NRC's requirement for a standby trust agreement.

ADDRESSES: Please refer to Docket ID NRC–2014–0177 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0177. 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 Agencywide Documents Access and Management System*

(ADAMS): You may access 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.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7777; email: *Ron.Linton@nrc.gov.*

I. Background

Criterion 9 of 10 CFR Part 40, Appendix A and NRC materials license SUA–1341, License Condition 9.5, requires Uranium One to submit to the NRC for review and approval, an annual update of the financial surety to cover third-party costs for decommissioning and decontamination for the Willow Creek ISR Project. The Willow Creek Project is located in Johnson and Campbell Counties, Wyoming. Contained within the Willow Creek Project, Irigaray and Christensen Ranch Annual Report dated August 22, 2013; Uranium One submitted to the NRC its annual surety update for 2013–2014 (ADAMS Accession No. ML13309B278). The NRC's staff reviewed the annual financial surety updates and found the values reasonable for the required reclamation activities (ADAMS Accession No. ML14141A487). Uranium One maintains an approved financial assurance instrument in favor of the State of Wyoming; however, it does not have a standby trust agreement (STA) in place, as required by 10 CFR Part 40, Appendix A, Criterion 9.

II. Description of Action

As of December 17, 2012, the NRC's uranium milling licensees, which are regulated, in part, under 10 CFR Part 40, Appendix A, Criterion 9, are required to have an STA in place. Criterion 9 provides that if a licensee does not use a trust as its financial assurance mechanism, then the licensee is required to establish a standby trust fund to receive funds in the event the Commission or State regulatory Agency exercises its right to collect the funds provided for by surety or letter of credit. The purpose of an STA is to provide a separate account to hold decommissioning funds in the event of a default. Consistent with the provisions of 10 CFR Part 40, Appendix A, Criterion 9(d), Uranium One has consolidated its NRC financial assurance sureties with those it is required to obtain by the State of Wyoming, and the financial instrument is held by the State of Wyoming. Uranium One has not established an STA, nor has it requested an exemption from the requirement to do so.

Wyoming law requires that a separate account be set up to receive forfeited decommissioning funds, but does not specifically require an STA. Section 35–11–424(a) of the Code of Wyoming states that ''[a]ll forfeitures collected under the provisions of this act shall be deposited with the State treasurer in a separate account for reclamation purposes.'' Under Wyoming Department of Environmental Quality (WDEQ) financial assurance requirements, WDEQ holds permit bonds in a fiduciary fund called an agency fund. If a bond is forfeited, the forfeited funds are moved to a special revenue account. Although the Wyoming special revenue account is not an STA, the special revenue account serves a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for reclamation (i.e., decommissioning) purposes.

The NRC has the discretion, under 10 CFR 40.14(a), to grant an exemption from the requirements of a regulation in 10 CFR Part 40 on its own initiative, if the NRC determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The NRC has elected to grant Uranium One an exemption to the STA requirements in 10 CFR Part 40, Appendix A, Criterion 9, for the surety arrangement until the 2016 review cycle to allow the NRC an opportunity to evaluate whether the State of Wyoming's separate account requirements for financial assurance instruments it holds is consistent with the NRC's STA requirements.

III. Discussion

A. Exemption Is Authorized by Law

The NRC staff concluded that the proposed exemption is authorized by law as 10 CFR 40.14(a) expressly allows for an exemption to the requirements of the regulation in 10 CFR Part 40, Appendix A, Criterion 9, and the proposed exemption will not be contrary to any provision of the Atomic Energy Act of 1954, as amended.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The exemption is related to the financial surety. The requirement that the licensee provide adequate financial assurance through an approved mechanism (e.g., a surety bond, irrevocable letter of credit) would remain unaffected by the exemption. Rather, the exemption would only pertain to the establishment of a dedicated trust in which funds could be deposited in the event that the financial assurance mechanism would need to be liquidated. The regulations in 10 CFR Part 40, Appendix A, Criterion 9(d), allow for the financial or surety arrangements to be consolidated within a State's similar financial assurance instrument. NRC has determined that while the WDEQ does not require an STA, the special revenue account may serve a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for site-specific reclamation (i.e., decommissioning) purposes. Because Uranium One remains obligated to establish an adequate financial assurance mechanism for its licensed sites, and the NRC has approved such a mechanism, sufficient funds are available in the event that the site would need to be decommissioned. A temporary delay in establishing an STA does not impact the present availability and adequacy of the actual financial assurance mechanism. Therefore, the limited exemption being issued by the NRC herein presents no undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption will not involve or implicate the common defense or security. Therefore, granting the exemption will have no effect on the common defense and security.

D. The Exemption Is in the Public Interest

The proposed exemption will enable the NRC staff to evaluate the State of Wyoming's separate account provision and the NRC's STA requirement to determine if they are comparable. The evaluation process will allow the NRC to determine whether Uranium One's

compliance with the state law provision will sufficiently address the NRC requirement as well, and therefore provide clarity on the implementation of the NRC regulation in this instance. Therefore, granting the exemption is in the public interest.

E. Environmental Considerations

The NRC staff has determined that granting of an exemption from the requirements of 10 CFR Part 40, Appendix A, Criterion 9 belongs to a category of regulatory actions which the NRC, by regulation, has determined do not individually or cumulatively have a significant effect on the environment, and as such do not require an environmental assessment. The exemption from the requirement to have an STA in place is eligible for categorical exclusion under 10 CFR 51.22(c)(25)(vi)(H), which provides that exemptions from surety, insurance, or indemnification requirements are categorically excluded if the exemption would not result in any significant hazards consideration; change or increase in the amount of any offsite effluents; increase in individual or cumulative public or occupational radiation exposure; construction impacts; or increase in the potential for or consequence from radiological accidents. The staff finds that the STA exemption involves surety, insurance and/or indemnity requirements and that granting Uranium One this temporary exemption from the requirement of establishing a STA would not result in any significant hazards or increases in offsite effluents, radiation exposure, construction impacts, or potential radiological accidents. Therefore, an environmental assessment is not required.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 40.14(a), the proposed temporary exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is in the public interest. NRC hereby grants Uranium One a temporary exemption from the requirement in 10 CFR Part 40, Appendix A, Criterion 9, to set up a STA to receive funds in the event the NRC or the State regulatory agency exercises is right to collect the surety. This exemption will expire on December 31, 2016, for the Willow Creek ISR Project. At that time, Uranium One will be required to ensure that its financial assurance arrangement is in compliance with the NRC's STA requirements.

Dated at Rockville, Maryland, this 21st day of July 2014.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–18050 Filed 7–30–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

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 June 1, 2014, to June 30, 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

03. Executive Office of the President (Schedule A 213.3103)

(b) Office of Management and Budget

(2) Not to Exceed 34 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and Government as a part of the Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–14 to 15 level. No new appointments may be made under this authority after September 30, 2016.

27. Veterans Affairs (Schedule A 213.3127)

(e) Not to Exceed 75 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and Government as a part of the Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to non-supervisory Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–15 level. No new appointments may be made under this authority after September 30, 2017.

33. Federal Deposit Insurance Corporation (Schedule A 213.3133)

(c) Temporary or time-limited positions that are directly related with resolving failing insured depository institutions; financial companies; or brokers and dealers; covered by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including but not limited to, the marketing and sale of institutions and any associated assets; paying insured depositors; and managing receivership estates and all associated receivership management activities, up to termination. Time limited appointments under this authority may not exceed 7 years.

37. General Services Administration (Schedule A 213.3137)

(a) Not to Exceed 95 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and Government as a part of the Smarter Information Technology Delivery Initiative. This authority may be used nationwide to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–11 to 15 level. No new appointments may be made under this authority after September 30, 2017.

Schedule B

No Schedule B authorities to report during June 2014.

Schedule C

The following Schedule C appointing authorities were approved during June 2014.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Farm Service Agency	State Executive Director—Oregon	DA140089	6/11/2014
BROADCASTING BOARD OF GOVERNORS.	International Broadcasting Bureau	General Manager	IB140004	6/19/2014
DEPARTMENT OF COMMERCE	Office of Public Affairs	Director of Speechwriting	DC140099	6/2/2014
	Office of the Chief of Staff	Deputy Director of Advance	DC140101	6/4/2014
	Office of Under Secretary	Senior Advisor	DC140104	6/4/2014
	Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Special Assistant for Policy Initiatives.	DC140106	6/9/2014
		Senior Advisor	DC140119	6/12/2014
	Office of the Deputy Secretary	Special Advisor	DC140120	6/12/2014
	Office of the Chief of Staff	Senior Protocol Officer	DC140122	6/16/2014
	Advocacy Center	Policy Assistant	DC140123	6/16/2014
	International Trade Administration	Confidential Assistant	DC140125	6/24/2014
COMMODITY FUTURES TRADING COMMISSION.	Division of Enforcement	Director, Division of Enforcement	CT140008	6/9/2014
	Office of the Chairperson	Director of Legislative Affairs	CT140006	6/16/2014
		Administrative Assistant	CT140009	6/25/2014
DEPARTMENT OF DEFENSE	Assistant Secretary of Defense (Acquisition).	Special Assistant for Acquisition	DD140063	6/23/2014
DEPARTMENT OF THE ARMY	Office of the Under Secretary	Special Assistant	DW140014	6/4/2014
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Special Assistant for Strategic Communications.	DB140081	6/12/2014
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Strategic Initiatives.	DB140082	6/12/2014
	Office of Career Technical and Adult Education.	Confidential Assistant (2)	DB140084	6/17/2014
			DB140087	6/20/2014
	Office of the Deputy Secretary	Special Assistant	DB140080	6/18/2014
DEPARTMENT OF ENERGY	Office of Energy Policy and Systems Analysis.	Special Assistant	DE140064	6/18/2014
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Special Assistant for Public Engagement.	EP140034	6/3/2014
	Office of the Assistant Administrator for Solid Waste and Emergency Response.	Special Assistant	EP140040	6/17/2014
FEDERAL COMMUNICATIONS COMMISSION.	Office of Media Relations	Director of Outreach and Strategy	FC140011	6/24/2014
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.	Office of the Chairman	Confidential Assistant	FR140001	6/16/2014
GENERAL SERVICES ADMINISTRATION.	Office of Communications and Marketing.	Deputy Press Secretary	GS140039	6/13/2014
	Office of Citizen Services and Innovative Technologies.	Program Director, Presidential Innovation Fellows.	GS140040	6/13/2014
	Office of the Administrator	Chief Customer Officer	GS140041	6/13/2014
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Special Advisor	DH140072	6/5/2014
		Senior Advisor	DH140070	6/6/2014
	Office of the Assistant Secretary for Public Affairs.	Online Communications and Outreach Advisor.	DH140071	6/6/2014
	Office of Intergovernmental and External Affairs.	Director of Business Outreach	DH140073	6/6/2014
	Center for Consumer Information and Insurance Oversight.	State Exchange Group Director	DH140101	6/26/2014
DEPARTMENT OF HOMELAND SECURITY.	Office of the Secretary	Special Assistant	DM140151	6/2/2014
	Federal Emergency Management Agency.	Director of Public Affairs	DM140155	6/19/2014
	United States Immigration and Customs Enforcement.	Director of Communications	DM140181	6/24/2014
	Office of the General Counsel	Counselor	DM140183	6/24/2014
	United States Citizenship and Immigration Services.	Counselor	DM140185	6/26/2014
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Policy Development and Research.	Financial Analyst for Housing Finance.	DU140027	6/6/2014
	Office of Policy Development and Research.	Special Assistant for Policy, Development, and Research.	DU140029	6/9/2014
	Office of Public Affairs	Special Assistant for Public Engagement.	DU140030	6/13/2014
DEPARTMENT OF THE INTERIOR.	Assistant Secretary—Water and Science.	Counselor- Water and Science	DI140040	6/20/2014

Agency name	Organization name	Position title	Authorization No.	Effective date
	Secretary's Immediate Office	Deputy Press Secretary	DI140048	6/20/2014
DEPARTMENT OF JUSTICE	Office of Public Affairs	Confidential Assistant	DJ140063	6/10/2014
	Office of Legislative Affairs	Attorney Advisor	DJ140055	6/16/2014
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant (2)	DL140055	6/5/2014
			DL140072	6/25/2014
	Veterans Employment and Training Service.	Special Assistant	DL140053	6/9/2014
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer	DL140054	6/9/2014
		Senior Legislative Assistant	DL140065	6/16/2014
	Office of the Assistant Secretary for Administration and Management.	Special Assistant	DL140056	6/16/2014
	Office of the Deputy Secretary	Senior Policy Advisor	DL140067	6/23/2014
	Bureau of International Labor Affairs.	Chief of Staff	DL140068	6/25/2014
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Special Assistant	NA140004	6/9/2014
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Assistant to the Director	BO140013	6/9/2014
	Office of E-Government and Information Technology.	Confidential Assistant	BO140018	6/9/2014
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Demand Reduction	Special Assistant	QQ140003	6/20/2014
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Assistant Director, Office of Public Engagement.	PM140028	6/12/2014
	Office of the General Counsel	Senior Counsel and Advisor	PM140029	6/12/2014
	Office of the Director	Director of Scheduling and Advance.	PM140032	6/20/2014
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Special Assistant	TN140006	6/17/2014
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE140003	6/9/2014
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Regional Administrator (Region II)	SB140022	6/9/2014
	Office of Communications and Public Liaison.	Press Secretary	SB140024	6/9/2014
	Office of Capital Access	Special Assistant	SB140025	6/9/2014
	Office of Communications and Public Liaison.	Special Advisor for Public Engagement.	SB140026	6/11/2014
		Press Assistant	SB140028	6/19/2014
DEPARTMENT OF STATE	Bureau of Legislative Affairs	Deputy Assistant Secretary	DS140089	6/10/2014
	Office of Faith Based Community Initiatives.	Special Representative	DS140104	6/18/2014
	Office of the Secretary	Special Assistant	DS140088	6/20/2014
	Bureau of Public Affairs	Deputy Assistant Secretary	DS140106	6/20/2014
DEPARTMENT OF THE TREASURY.	Assistant Secretary (Public Affairs)	Senior Advisor	DY140082	6/4/2014
	Assistant Secretary for Management.	Confidential Assistant	DY140083	6/4/2014
	Assistant Secretary for Financial Institutions.	Policy Advisor	DY140095	6/24/2014

The following Schedule C appointing authorities were revoked during June 2014.

Agency	Organization	Position title	Authorization No.	Vacate date
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	Senior Program Manager for Global Food Security.	DA100165	6/28/2014
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Advance Specialist	DC110115	6/14/2014
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Director of Legislative Affairs	CT140004	6/13/2014
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Confidential Assistant	DB130028	6/14/2014
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Strategic Initiatives.	DB130029	6/14/2014
	Office of the Under Secretary	Confidential Assistant	DB140073	6/24/2014

Agency	Organization	Position title	Authorization No.	Vacate date
EXPORT-IMPORT BANK	Office of the Chairman	Senior Vice President and Chief of Staff.	EB130003	6/25/2014
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Health.	Special Assistant	DH140020	6/6/2014
	Office of the Assistant Secretary for Legislation.	Confidential Assistant	DH120112	6/14/2014
DEPARTMENT OF HOMELAND SECURITY.	United States Citizenship and Immigration Services.	Senior Counselor to the Director	DM110262	6/14/2014
	Federal Emergency Management Agency.	Director of Public Affairs	DM120076	6/14/2014
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Director of Scheduling	DI120046	6/6/2014
	Secretary's Immediate Office	Press Assistant	DI130022	6/28/2014
DEPARTMENT OF JUSTICE	Community Relations Service	Senior Counsel	DJ130029	6/14/2014
DEPARTMENT OF LABOR	Bureau of International Labor Affairs.	Chief of Staff	DL100036	6/1/2014
	Office of the Secretary	Special Assistant	DL130019	6/6/2014
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Assistant to the Director	BO130016	6/8/2014
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Special Assistant	BO130022	6/28/2014
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary	Special Assistant to the Secretary of Defense for Protocol.	DD130037	6/27/2014
DEPARTMENT OF TRANSPORTATION.	Public Affairs	Deputy Director of Public Affairs	DT130017	6/7/2014

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. 2014–17990 Filed 7–30–14; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72674; File No. SR–EDGX–2014–21]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire the EDGE Routed Liquidity Report

July 25, 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 July 18, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate reference in Rule 13.9 to the EDGE Routed Liquidity Report, which is a data product that is to be discontinued by the Exchange. The Exchange also proposes to delete the fees related to the EDGE Routed Liquidity Report from its fee schedule. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete reference to the EDGE Routed Liquidity Report in Rule 13.9 as well as its related fees from the Exchange's fee schedule. In sum, the EDGE Routed Liquidity Report is a data feed that contains historical order information for orders routed to away destinations by the Exchange. The EDGE Routed Liquidity Report provides routed order information to subscribers on the morning of the following trading day that includes: Limit price, routed quantity, symbol, side (bid/offer), time of routing, and the National Best Bid and Offer at the time of routing. The Exchange now proposes to delete reference to EDGE Routed Liquidity Report in Rule 13.9 as well as its related fees from the Exchange's fee schedule because it intends to discontinue offering this data feed. Therefore, reference to the product within Exchange's rules and applicable fees in its fee schedule would no longer serve any legitimate purpose upon the product being retired by the Exchange. The Exchange has no subscribers to the EDGE Routed Liquidity Report and will terminate the data feed upon the operative date of this proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b) of the Act,[3] in general, and Section 6(b)(5) of the Act,[4] in particular, in that is promotes just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest. The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities.

Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it eliminates any investor confusion by deleting references to a data product, and its related fees, that is to be discontinued by the Exchange, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. In addition, the Exchange has no subscribers to the EDGE Routed Liquidity Report, the EDGE Routed Liquidity Report is not a core product offering by the Exchange, nor is the Exchange required by the Act to offer such a product. The proposed rule change will not permit unfair discrimination among customers, brokers, or dealers because the EDGE Routed Liquidity Report will no longer be offered by the Exchange.

In addition, the Exchange believes that the proposed removal of the fees for the EDGE Routed Liquidity Report from its fee schedule is consistent with Section 6(b)(4) of the Act[7] because it would delete fees for a data product that is to be discontinued by the Exchange, thereby eliminating investor confusion. Lastly, the Exchange also believes that the proposed amendment to its fee schedule is reasonable and non-discriminatory because it will apply uniformly to all members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[8] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will remove references to a data product, and its related fees, that is to be retired by the Exchange and is not designed to have a competitive impact. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would enable the Exchange to avoid enlisting new subscribers during the operative delay period only to retire the product shortly thereafter once the proposed rule change becomes operative. In addition, the Exchange notes it has no subscribers to the EDGE Routed Liquidity Report. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–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.

All submissions should refer to File Number SR–EDGX–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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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).

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–EDGX–2014–21, and should be submitted on or before August 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17987 Filed 7–30–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72675; File No. SR–EDGA–2014–18]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire the EDGE Routed Liquidity Report

July 25, 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 July 18, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate reference in Rule 13.9 to the EDGE Routed Liquidity Report, which is a data product that is to be discontinued by the Exchange. The Exchange also proposes to delete the fees related to the EDGE Routed Liquidity Report from its fee schedule. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete reference to the EDGE Routed Liquidity Report in Rule 13.9 as well as its related fees from the Exchange's fee schedule. In sum, the EDGE Routed Liquidity Report is a data feed that contains historical order information for orders routed to away destinations by the Exchange. The EDGE Routed Liquidity Report provides routed order information to subscribers on the morning of the following trading day that includes: Limit price, routed quantity, symbol, side (bid/offer), time of routing, and the National Best Bid and Offer at the time of routing. The Exchange now proposes to delete reference to EDGE Routed Liquidity Report in Rule 13.9 as well as its related fees from the Exchange's fee schedule because it intends to discontinue offering this data feed. Therefore, reference to the product within Exchange's rules and applicable fees in its fee schedule would no longer serve any legitimate purpose upon the product being retired by the Exchange. The Exchange has no subscribers to the EDGE Routed Liquidity Report and will terminate the data feed upon the operative date of this proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b) of the Act,[3] in general, and Section 6(b)(5) of the Act,[4] in particular, in that is promotes just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest. The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities.

Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it eliminates any investor confusion by deleting references to a data product, and its related fees, that is to be discontinued by the Exchange, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. In addition, the Exchange has no subscribers to the EDGE Routed Liquidity Report, the EDGE Routed Liquidity Report is not a core product offering by the Exchange, nor is the Exchange required by the Act to offer such a product. The proposed rule change will not permit unfair discrimination among customers, brokers, or dealers because the EDGE Routed Liquidity Report will no longer be offered by the Exchange.

In addition, the Exchange believes that the proposed removal of the fees for the EDGE Routed Liquidity Report from its fee schedule is consistent with Section 6(b)(4) of the Act[7] because it would delete fees for a data product that is to be discontinued by the Exchange, thereby eliminating investor confusion. Lastly, the Exchange also believes that the proposed amendment to its fee schedule is reasonable and non-discriminatory because it will apply uniformly to all members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[8] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will remove references to a data product, and its related fees, that is to be retired by the Exchange and is not designed to have a competitive impact. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would enable the Exchange to avoid enlisting new subscribers during the operative delay period only to retire the product shortly thereafter once the proposed rule change becomes operative. In addition, the Exchange notes it has no subscribers to the EDGE Routed Liquidity Report. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–18 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–EDGA–2014–18. 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–EDGA–2014–18, and should be submitted on or before August 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17988 Filed 7–30–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72677; File No. SR–OCC–2014–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Process All Sell Transactions Prior to the Exercise of Long Options in Market-Maker Accounts To Ensure That Only Net Long Positions May Be Exercised

July 25, 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 July 17, 2014, The Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change, coupled with the related system modifications, will curtail use of a trading strategy known as ''dividend plays'' in the options industry. OCC proposed to add an interpretation and policy to Rules 801 and 805, respectively, stating that OCC will process all sales of options in a Market-Maker's account prior to the exercise of any long call options in the account to ensure that only net long positions in a particular series may be exercised.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change would add an interpretation and policy to Rules 801 and 805, respectively, stating that OCC will, in respect of Market-Maker accounts, process all sell transactions prior to the exercise of long options in the account, to ensure that only net long positions may be exercised. This proposed change, coupled with the related system modifications, would have the effect of implementing a policy approved by the OCC Board of Directors intended to curtail use of a trading strategy known as ''dividend plays'' in the options industry.

Background

Dividend plays are an options trading strategy that has been executed on options exchanges for many years. The purpose of the trading strategy is to capture the dividend income of a stock through the exercise of in-the-money call options on the day prior to the stock's ''ex-dividend'' date, which is the date that determines whether the holder of a stock is entitled to the stock's dividend. Where stock is transferred before the ex-dividend date, the new owner of the stock is entitled to the dividend. In order to capture this dividend income, a trader will buy a large number of call options of the same series on a stock on the day prior to the stock's ex-dividend date and then write an offsetting number of call options of the same series on the same stock at the same price. Because the two transactions are exactly offsetting and executed at the same price, the trader's position in the call options is net neutral and has limited market risk. At the end of the day, the trader then exercises all of its long call options even though the trader's net position is neutral. OCC, using its standard assignment process, then assigns all of that day's exercised long call options of the same series across all options writers.

If all in-the-money long call options of the same series were exercised on the day prior to the ex-dividend date, the trader, and all other market participants in the relevant option series, would be assigned all its short call positions and would not have a resulting long stock position that is entitled to the dividend. However, a certain percentage of open interest in in-the-money call options goes unexercised on the day prior to the ex-dividend date. Generally, this failure is due to a number of factors, including transaction costs, the ignorance of certain market participants of the mechanics of call options and ex-dividend dates, inattentiveness by certain market participants in monitoring their positions and irrationality.[3]

Because traders executing a dividend play exercise 100% of their long call options, it increases the overall percentage of open interest that gets exercised. OCC's standard assignment processing will close out a large portion of a traders' short position established that day, but will also close out a large portion of other, pre-existing, market participants' short positions. The larger the position taken by a trader executing a dividend play compared to the pre-existing open interest, the higher the proportion of pre-existing open interest that will be closed out, and a larger share of unassigned short positions will be left to the dividend play trader. For every short call position that is not assigned, a trader executing the dividend play does not have to deliver stock and is able to capture the dividend payment for the shares of stock it remains long.

The vast majority of dividend play activity occurs in Market-Maker accounts and OCC's processing sequence makes it possible for market makers to execute conventional dividend plays, as described above. OCC processes exercises after option purchases but before options sales, also known as ''writing'' transactions. This processing sequence permits a market maker executing a dividend play to buy and sell equal quantities of call options of a given series and exercise the purchased call options even though the market maker's position is neutral. If OCC processed sales before exercises, market-makers' purchases and sales on a given day would offset each other, and when OCC processed the exercises, there would no net long call positions to exercise. This would make the conventional dividend play impossible. However, OCC processes exercises before sales in order to reduce operational risk for clearing members clearing options transactions in accounts other than Market-Maker accounts.

Positions in accounts other than Market-Maker accounts are carried on a gross basis, meaning that an account can be both long and short the same series. This means that trades must be coded as opening or closing transactions. If OCC processed sales before exercises in an account other than a Market-Maker account, a coding error could cause rejection of exercise instructions that could result in substantial losses. However, coding errors do not present a risk with respect to Market-Maker accounts, where positions are carried on a net basis and trades do not have to be coded as opening or closing transactions.

OCC Review of Dividend Plays

In December 2012, the Securities Industry and Financial Markets Association's (''SIFMA'') Listed Options Trading Committee requested that OCC formally review dividend plays.[4] SIFMA expressed a concern that OCC could suffer losses as a result of an operational error in processing dividend plays. Because successful dividend plays rely on part in the dividend trader's having a large position compared to the pre-existing open interest in the series of options subject to the dividend play, SIFMA believed that an operational error in processing dividend trades could result in a clearing member being liable for a settlement amount that could place the clearing member in financial peril and potentially exceed the collateral deposited by the clearing member with OCC. Following receipt of the SIFMA letter, OCC initiated a comprehensive review of dividend plays.

In connection with its review of dividend plays OCC noted that these transactions represent only a small number of OCC cleared options, and that most of the dividend play trading is cleared through two large clearing members that are large and well-capitalized and have robust risk management processes. OCC's therefore concluded that dividend plays did not materially increase OCC's risk. As requested by OCC's Board of Directors, OCC's Operations Roundtable further evaluated the proposed change in OCC's processing sequence to determine whether there were any unintended consequences to implementing the proposed change. The Operations Roundtable, which consists of operations staff of a cross-section of OCC's clearing members and operations

[3] *See e.g.,* Veronica K. Pool, Hans R. Stool, Robert E. Whaley, *Failure to exercise call options: An anomaly and a trading game,* 11 J. Fin. Markets 1 (2007); Jia Hao, Avner Kalay, Stewart Mayhew, *Ex-Dividend Arbitrage in Options Markets,* 23 Rev. Fin. Stud. 271, Issue 1 (2009).

[4] See Letter from Ellen Greene, Vice President of SIFMA, to Wayne P. Luthringshausen, Chairman and Chief Executive Officer of OCC (December 3, 2012) (the ''SIFMA Letter'') available at *http://www.sifma.org/issues/item.aspx?id=8589942317.*

staff of the options exchanges, carefully reviewed the proposal over several months and concluded that no material unintended consequences would result from its implementation.

Dividend plays generally may be perceived negatively in the marketplace and have been criticized as unfair to retail investors and as distorting options transactions volume.[5] OCC determined that while it should not take action to eliminate or restrict dividend plays based on these factors, nor should it facilitate these transactions. OCC's processing sequence, under which sale transactions are processed after exercises, is generally designed to reduce the operational risk to clearing members that results from potential miscoding of, for example, an opening trade for the account of one clearing member customer as a closing trade for the account of another clearing member customer. However, this coding risk does not exist with respect to Market-Maker accounts, where positions are carried on a net basis. Accordingly, OCC concluded that its processing sequence unnecessarily allowed certain market makers to execute dividend plays and therefore is proposing to change it so that for these accounts sale transactions are processed before exercises. The change would have the effect of significantly restricting dividend plays because large long positions that would otherwise be exercised would be offset by sale transactions.

Proposed Amendment

OCC proposes to amend the Rules to add an interpretation and policy to Rule 801 and to Rule 805 to state, with respect to Market-Maker accounts, that sell transactions will be processed before exercises. Because the definition of ''Market-Maker Account'' in Article 1 of OCC's By-Laws would include a JBO Participants' account, the interpretation and policy clarifies that this netting will not be applied to JBO Participants' accounts until such time as OCC determines on not less than 30 days' notice to clearing members that OCC is able to identify, on a subaccount basis, the transactions of a JBO Participant within JBO Participants' accounts, in which case JBO Participants' accounts shall be considered Market-Maker accounts. OCC also proposes to modify OCC's systems to make a corresponding change in the processing sequence. This change in the processing sequence would only applied to Market-Maker accounts (and, potentially subaccounts in JBO Participants' accounts), and would not change the processing sequence, and the associated protection against coding errors, applicable to clearing member accounts other than Market-Maker accounts.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''),[6] and the rules and regulations thereunder, including Rule 17Ad–22(d)(1)[7] and Rule 17Ad–22(d)(4),[8] because the changes are designed to provide a well-founded, transparent and enforceable legal framework for the exercise of long and short call options and to minimize sources of operational risk to clearing members through the development of appropriate systems, controls and procedures. The proposed change achieves this purpose by clearly stating in the rules that OCC will, in respect of Market-Maker accounts, process all sell transactions prior to the exercise of long options in the account, thereby making this processing sequence transparent, and by instituting corresponding system changes in the processing sequence for exercised call options in Market-Maker accounts. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[9] The proposed interpretation and policy primarily affects market makers and would provide notice to all market makers of the change in OCC's processing sequence with respect to Market-Maker accounts. The proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed rule change would be applied uniformly to all Market-Maker accounts. The change would have the effect of curtailing dividend plays, but this limitation will apply equally to all exchanges and all clearing members and by extension all market-maker customers of clearing members.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–15 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–OCC–2014–15. 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

[5] SIFMA Letter, p. 1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(d)(1).

[8] 17 CFR 240.17Ad–22(d)(4).

[9] 15 U.S.C. 78q–1(b)(3)(I).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site: *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_15.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–15 and should be submitted on or before August 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18038 Filed 7–30–14; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and an extenstion of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 29, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. General Request for Social Security Records—eFOIA—20 CFR 402.130—0960–0716. Interested members of the public use this electronic request to ask SSA for information under the Freedom of Information Act (FOIA). SSA also uses this collection to track the number and type of information requests; fees charged; payment amounts; and SSA's responses to public requests within the required 20 days. Respondents are members of the public including individuals, institutions, or agencies requesting information or documents under FOIA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
eFOIA	2,500	1	3	125

2. Incoming and Outgoing Intergovernmental Personnel Act Assignment Agreement—5 CFR 334—0960–0792. The Intergovernmental Personnel Act (IPA) mobility program provides for the temporary assignment of civilian personnel between the Federal Government and State and local governments; colleges and universities; Indian tribal governments; federally-funded research and development centers; and other eligible organizations. The Office of Personnel Management (OPM) created a generic form, the OF–69, for agencies to use as a template when collecting information for the IPA assignment. The OF–69 collects specific information about the agreement, including (1) the enrolled employee's name, Social Security number, job title, salary, classification, and address; (2) the type of assignment; (3) the reimbursement arrangement, and (4) an explanation of how the assignment benefits both SSA and the non-federal organization involved in the exchange. OPM directs agencies to use their own forms for recording these agreements. Accordingly, SSA modified the OF–69 to meet our needs, creating the SSA–187 for incoming employees and the SSA–188 for outgoing employees. Respondents are the individuals we describe above who participate in the IPA exchange with SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Non-Federal employee	10	1	30	5
Non-Federal employer signers	20	1	5	2
Totals	30			7

[10] 17 CFR 200.30–3(a)(12).

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 2, 2014. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Information Collections Conducted by State Disability Determination Services on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014—0960–0555. State Disability Determination Services (DDS) collect the information necessary to administer the Social Security Disability Insurance and Supplemental Security Income (SSI) programs. They collect medical evidence from consultative examination (CE) sources, credential information from CE source applicants, and medical evidence of record (MER) from claimants' medical sources. The DDSs collect information from claimants regarding medical appointments, pain, symptoms, and impairments. The respondents are medical providers, other sources of MER, and disability claimants.

Type of Request: Extension of an OMB-approved information collection.

CE Collections

There are three CE information collections: (a) Medical evidence about claimants' medical condition(s) that DDS's use to make disability determinations when the claimant's own medical sources cannot or will not provide the required information, and proof of credentials from CE providers; (b) CE appointment letters; and (c) CE claimant reports sent to claimants' doctors.

(a) Medical Evidence and Credentials From CE Providers

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
CE Paper Submissions	1,400,000	1	30	700,000
CE Electronic Submissions	296,000	1	10	49,333
CE Credentials	4,000	1	15	1,000
Totals	1,700,000			750,333

(b) CE Appointment Letters and (c) CE Claimants' Report to Medical Providers

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
b) CE Appointment Letters	880,000	1	5	73,333
c) CE Claimants' Report to Medical Providers	450,000	1	5	37,500
Totals	1,330,000			110,833

MER Collections

The DDS's collect MER information from the claimant's medical sources to determine a claimant's physical or mental status prior to making a disability determination.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper Submissions	3,150,000	1	20	1,050,000
Electronic Submissions	9,450,000	1	12	1,890,000
Totals	12,600,000			2,940,000

Pain/Other Symptoms/Impairment Information From Claimants

The DDSs use information about pain/symptoms to determine how pain/symptoms affect the claimant's ability to do work-related activities prior to making a disability determination.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Pain/Other Symptoms/Impairment Information	2,100,000	1	20	700,000

The total estimated annual burden for all categories described in this information collection is 4,501,166 hours.

Note: This is a correction notice: SSA published this information collection as a revision and with incorrect burden information at 79 FR 26798 on 05/09/14. We are correcting this error here.

2. Authorization to Disclose Information to SSA—20 CFR 404.1512 and 416.912, 45 CFR 160 and 164—0960–0623. Sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Social Security Act require claimants to furnish such medical and other evidence as the Commissioner of Social Security may require to prove that they are disabled. SSA must obtain sufficient evidence to make eligibility determinations for Title II and Title XVI payments. Therefore, the applicant must authorize release of information from various sources to SSA. The applicants use Form SSA–827 to provide consent for the release of medical records, education records, and other information related to their ability to perform tasks. Once the applicant completes Form SSA–827, SSA or the State DDS sends the form to the designated source(s) to obtain pertinent records. The respondents are applicants for Title II benefits and Title XVI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–827 with electronic signature (eAuthorization)	1,922,938	1	9	288,441
SSA–827 with wet signature (paper version)	1,441,052	1	10	240,175
Totals	3,363,990			528,616

Dated: July 28, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–17994 Filed 7–30–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Landing Area Proposal

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 for to renew an information collection. FAA Form 7480–1 (Notice of Landing Area Proposal) is used to collect information about any construction, alteration, or change to the status or use of an airport.

DATES: Written comments should be submitted by September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0036.

Title: Notice of Landing Area Proposal.

Form Numbers: FAA Form 7480–1.

Type of Review: Renewal of an information collection.

Background: FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity. The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, the effects on existing or contemplated traffic patterns of neighboring airports, the effects on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

Respondents: Approximately 1,500 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 45 minutes.

Estimated Total Annual Burden: 1,125 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 July 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–18060 Filed 7–30–14; 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: Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft

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. A Special Federal Aviation Regulation requires passengers who intend to use an approved POC to present a physician statement before boarding. The flight crew must then inform the pilot-in-command that a POC is on board.

DATES: Written comments should be submitted by September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0702.

Title: Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: A pilot in command is required to be apprised when a passenger brings a POC on board the aircraft, and passengers who have a medical need to use a POC during flight are required to possess a signed physician statement describing the oxygen therapy needed, to determine whether an inflight diversion to an airport may be needed in the event the passenger's POC fails to operate or the aircraft experiences cabin pressurization difficulties, and to verify the need for the device, the oxygen therapy needed to be provided by use of the POC, and the oxygen needs of the passenger in case of emergency.

Respondents: Approximately 1,690,555 passengers.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 6 minutes.

Estimated Total Annual Burden: 169,046 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 July 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–18062 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP12–003

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This document denies a petition from Mr. Peter J. Gonzalez (the petitioner) of Fuquay Varina, NC, requesting that the agency open an investigation into headlamp failures on the model year (MY) 2008 Saturn Outlook and similar vehicles. After reviewing the petition and other information, NHTSA has concluded that further investigation of MY 2007–2009 Saturn Outlook vehicles and the similar GMC Acadia vehicles (subject vehicles) is unlikely to result in a determination that a safety-related defect exists. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Chan, Defects Assessment Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–8537.

SUPPLEMENTARY INFORMATION:

Alleged Problem

The petitioner alleges that his MY 2008 Saturn Outlook vehicle had experienced a loss of low beam headlamp illumination. The petitioner found that the headlamp harness mating to the headlamp had melted. He also noted that there were other complaints on NHTSA's Web site related to the same melting of the headlamp harness.

Loss of Headlamp Illumination

The United States Code for Motor Vehicle Safety (Title 49, Chapter 301) defines motor vehicle safety as ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.''

Over the last 25 years, ODI has opened numerous defect investigations of the loss of headlamp illumination. Investigations that resulted in safety recalls involved simultaneous loss of illumination from both headlamps. NHTSA does not consider the loss of a single headlamp as presenting an unreasonable safety risk—such failures are readily detectable by the driver while allowing the vehicle to retain forward visibility and conspicuity from the remaining headlamp. There is typically enough time between the failure of the first headlamp and the second during which the vehicle operator can obtain the needed repairs.

Subject Vehicle Complaints

As of July 16, 2014, out of a population of 248,453 subject vehicles, NHTSA identified 473 consumer complaints of inoperative headlamp(s). Many of these complaints indicated that the headlamp harness suffered damage from overheating. After reviewing the complaints, ODI found:

—69% (328) Alleged that a single headlamp was inoperative.

—18% (86) alleged that both headlamps were inoperative but not at the same time.

—9% (41) alleged that both headlamps were inoperative but the complaints did not indicate whether the failures had occurred at the same time.

—4% (17) alleged that both headlamps were inoperative at the same time.

—One additional complaint cited wire harness damage to both sides but did not specify an outage.

—No crashes or loss of vehicle control were reported.

—Reported thermal damage was limited to melting of the headlamp harness and/or the headlamp housing.
—Frequently, a headlamp would intermittently fail to illuminate or flickered before becoming completely inoperative.

For the seventeen complaints that alleged simultaneous failure of both headlamps while attempting to turn them on or while driving, the headlamp failures likely had occurred one at a time—the subject vehicle's headlamps are connected in a parallel circuit and each circuit is fused independently. Therefore, failure of one headlamp or its harness is very unlikely to affect the other headlamp's operation. Furthermore, during the agency's headlamp failure investigation PE09–019, a random sample of consumers was contacted by ODI in a telephone survey to verify their experiences. Though the consumers stated in complaints to the manufacturer that both headlamps failed at the same time, ODI discovered through its interviews of these complainants that, in fact, one headlamp would begin to flicker and then cut off while the other headlamp remained operational. In a few cases where no action was taken by the complainants, the second headlamp failed several months later; however none of those surveyed could confirm that both headlamps failed to illuminate simultaneously. There is no reason to believe this is not applicable to the subject vehicles as well.

Technical Service Bulletin

In May of 2009, General Motors Corporation (GM) issued Technical Bulletin #09–08–42–004 applicable to the MY 2007–2009 Saturn Outlook vehicles. The Subject: ''Low Beam Headlamp Replacement/Diagnosis (Inspect Fuse, Bulb, Harness, Replace Harness and Fill Connector Cavity for Low Beam Bulb Connector with Nyogel Grease).'' The bulletin provides corrective actions to address the condition that some customers describe as the low beam headlamp bulb being inoperative. A reduction of consumer complaints accompanied release of this bulletin, suggesting that the repair cost concerns on the part of many of the complainants were addressed.

Investigation Precedent

ODI previously opened two defect investigations concerning inoperative headlamps due to overheating and melting of headlamp harness—failures very similar to those described by owner of the subject vehicle. Both investigations were closed without a recall because a safety-related defect trend was not identified. The closing resume summary of PE04–020 stated: ''Nissan and Ford found that the original equipment headlight stainless steel bulb terminals may over time cause elevated contact resistance and overheat the electrical connector housing. This can result in a headlight flickering, bulb outage and heat deformation to the headlight connector.

This problem can affect independently either headlight but does not cause simultaneous failure of both headlights. The problem also does not affect front parking lamps. As a result, the complaints typically report single failure of one headlight. There were no crashes or loss of vehicle control reported.''

In another previous investigation of headlamp harness failure (PE05–007), the closing resume summary stated: ''Improper installation of the original equipment headlight connector can cause increased terminal resistance and overheat the headlight connector.

This problem can affect independently either headlight but does not cause simultaneous failure of both headlights. The problem also does not affect front parking lamps. As a result, the complaints typically report single failure of one headlight. There were no crashes or loss of vehicle control reported.''

Customer Satisfaction Program

In December of 2011, GM issued a Customer Satisfaction Program (CSP), Bulletin No. 11055 that applies to the subject vehicles. GM notified the owners to bring their vehicles to a GM dealer to have the headlamp connectors and the low beam headlamp bulbs replaced at no charge through 2013. Shortly after issuance of the more recent GM bulletin, related complaints to NHTSA decreased significantly from over a hundred annually to 21 for calendar year (CY) 2012, 33 for CY 2013 and only 11 (year-to-date) as of July 16, 2014.

Conclusion

Based on the information currently available, NHTSA does not believe that the headlamp condition as alleged by the petitioner indicates the likelihood of a safety-related defect that would warrant a formal investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2014–17984 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP13–002

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice states the reasons for denying a Defect Petition (DP) (DP 13–002) submitted under 49 CFR parts 552 by Ms. Jessie A. Powell of Middleboro, MA (petitioner) in a January, 2013 letter to the Administrator of NHTSA (the ''Agency''). The petitioner requested that the Agency open an investigation into software and brake failures on model year (MY) 2012 Toyota Prius C vehicles (the ''Subject Vehicles'').

After reviewing materials in-hand, those furnished by the petitioner, and upon completing an inspection of her vehicle, NHTSA sees no indication that additional investigation would lead to a finding that a defect related to motor vehicle safety exists. NHTSA has concluded that further investigation of the issue raised in the petition is not warranted. The Agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Price, Office of Defects Investigation (ODI), NHTSA; 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5410. Email: *jeffrey.price@dot.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to 49 CFR 552.1, interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. Upon receipt of a properly filed petition, the Agency conducts a technical review (§ 552.6) of the petition, material submitted with the petition, and any appropriate additional information. After considering the technical review and taking into

account appropriate factors, which may include, among others, allocation of Agency resources, Agency priorities, and the likelihood of success in litigation that might arise from a determination of noncompliance or a defect related to motor vehicle safety, the Agency will grant or deny the petition (§ 552.8).

Background Information

Petition Overview

On January 3, 2013, NHTSA received a letter (ODI No. 10487746) from Ms. Jessie A. Powell petitioning the agency to investigate drivability and braking concerns in the subject vehicle.

Petition Main Points

The petition expressed two concerns:

1. ''The first software problem was when the vehicle shifted from battery to motor and caused such impact, I initially believed the vehicle had been struck in the rear.''

2. ''The next more alarming problem was NO BRAKES. The brake pedal traveled to the floor and a dashboard warning light flashed.''

This symptom occurred twice, leading to the vehicle being towed to the dealership, the second time in the dealership parking lot after diagnostics of the first incident.

ODI Analysis of the Defect Petition Request

ODI's petition review included the following;

- Review of the petition and its enclosures;
- Assessment of petition vehicle history;
- Inspection of the Petitioners vehicle on April 4, 2013;
- Inspection of an additional complaint vehicle in June of 2013; and Review of potentially related VOQs.

Powell Vehicle History

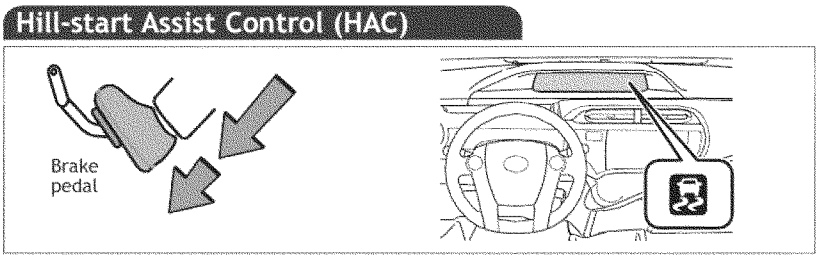
Mar 3, 2012—Build Date (DTC History)
Apr 23, 2012—10 mi Date of First Use (DTC History/Vehicle History Report)
Apr 27, 2013—110 mi Passed Safety Inspection (Vehicle History Report)
May 8, 2012—Rough transition from battery to motor (Petition)
May 15, 2012—Brake pedal to floor, dashboard warning light, behavior repeated at home, and vehicle towed to dealership (Petition) [1]
May 17, 2012 841 mi—DTC pulled: U0151, U0293, U0100, P3000, U0101 Same brake symptoms as previous, at dealership (Petition)
Apr 4, 2013 831 mi—Vehicle inspection by NHTSA and Toyota representatives

On Apr 4, 2013, ODI met with the petitioner, representatives from Toyota, and legal counsel for both parties at a Toyota dealership. Included in the visit were an interview of the petitioner, basic inspection of the subject vehicle, and test drives of the subject vehicle and an exemplar.

Ms. Powell was interviewed to collect specific details concerning her complaint and then accompanied by NHTSA personnel while she test-drove her vehicle in the same dealership parking lot, duplicating the complaint condition. NHTSA personnel also drove the vehicle with Ms. Powell present and experienced the complaint condition. Specifically, the vehicle was test driven according to the same driving cycle described by the owner. The condition was found to be normal operation of the ''hill holder'' feature of the vehicle. The dashboard warning light Ms. Powell referred to in her complaint was the flashing light described in the ''Hill Holder'' operation section of the owner's manual. This function allows the vehicle brake system to apply brakes to keep the vehicle from rolling backwards while on a hill. This vehicle feature was explained to Ms. Powell by NHTSA personnel. Ms. Powell neither accepted nor denied the explanation of what was occurring in her vehicle. At no time was there any ''jolt'' from the battery during the transition from battery to gas engine operation. The vehicle was then put on a hoist where the vehicle powertrain, brake systems and complete electrical system were checked. All computer systems were checked for Diagnostic Trouble Codes. The codes found were due to a discharged battery. This vehicle had been parked and unused for many months, requiring a jump start to move it into position for the inspection.

Hill Assist Control (HAC), a feature intended to prevent the vehicle from rolling backwards when starting from a stationary position on an incline, is described in the Prius C Quick Start Guide and Owner's Manual:

Quick Start Guide (p. 23):



HAC helps prevent rolling backwards on an incline. To engage, push further down on brake pedal while at a complete stop until a beep sounds and slip indicator illuminates. HAC holds for approximately two seconds after releasing brake pedal.

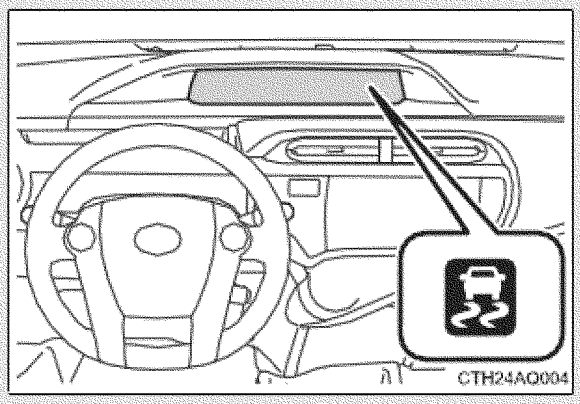
Refer to the *Owner's Manual* for more details.

Owner's Manual (p. 222 – 223):

BILLING CODE 4910–59–P

[1] Note—Improper mileage of 841 entered by Dealership on May 15, 2012. Correct mileage 831 miles on May 15, 2012 and inspection date Apr 4, 2013.

Assists with starting off and temporarily maintains braking power even if the foot is removed from the brake pedal when starting off on an incline or a slippery slope.



To engage hill-start assist control, further depress the brake pedal when the vehicle is stopped completely.

A buzzer will sound once to indicate the system is activated. The slip indicator will also start flashing.

Hill-start assist control operating conditions

- The system operates in the following situations:
  - The shift lever is in a position other than P.
  - The parking brake is not applied.
  - The accelerator pedal is not depressed.
- Hill-start assist control cannot be operated while the slip indicator light is illuminated.

Hill-start assist control

- While hill-start assist control is operating, the brakes remain automatically applied after the driver releases the brake pedal. The stop lights and the high mounted stoplight turn on.
- Hill-start assist control operates for about 2 seconds after the brake pedal is released.
- If the slip indicator does not flash and the buzzer does not sound when the brake pedal is further depressed, slightly reduce the pressure on the brake pedal (do not allow the vehicle to roll backward) and then firmly depress it again. If the system still does not operate, check that the operating conditions explained above have been met.

BILLING CODE 4910–59–C

Hill-start assist control buzzer

- When hill-start assist control is activated, the buzzer will sound once.
- In the following situations, hill-start assist control will be canceled and the buzzer will sound twice.
  - No attempt is made to drive the vehicle within approximately 2 seconds of releasing the brake pedal.
  - The shift lever is moved to P.
  - The parking brake is applied.
  - The brake pedal is depressed again.
  - The brake pedal has been depressed for more than approximately 3 minutes.
- If a buzzer other than the hill-start assist control buzzer is sounding, the hill-start assist control buzzer may not sound.

If the slip indicator comes on

It may indicate a malfunction in the system. Contact your Toyota dealer.

2 When driving

CAUTION

Hill-start assist control

- Do not overly rely on hill-start assist control. Hill-start assist control may not operate effectively on steep inclines and roads covered with ice.
- Unlike the parking brake, hill-start assist control is not intended to hold the vehicle stationary for an extended period of time. Do not attempt to use hill-start assist control to hold the vehicle on an incline, as doing so may lead to an accident.

VOQs Pertaining to the 2012 Prius

All 133 consumer complaints filed with NHTSA as of July 16, 2014 for the three MY 2012 Prius variants [2] (only four pertained to the Prius C variant subject to this petition) were reviewed for signs of the jolting symptom cited early in the petition. None of them indicated experiencing jolting sensations in routine driving similar to those reported by the petitioner.

Further review identified no trend of the brake behavior reported by the petitioner (brake pedal to the floor along with the VSC light).

Discussion

After a test drive and vehicle inspection, no actionable problem was found within the petitioner's vehicle. The braking concern reported turned out to be normal vehicle operation. Broader review of the consumer complaints reported for all variants of the subject vehicle showed no indication that either the reported jolting sensation or the brake performance concerns reported are occurring in this vehicle population at a level that would require investigative action by NHTSA.

The petitioner identified other complaints of poor braking performance and low brake pedal received by NHTSA concerning Prius models. The following recalls by Toyota were to address many of these complaints. Neither of these recalls is applicable to Ms. Powell's 2012 Prius C.

1. Recall 10V–039 March 5, 2010—Reprogramming ABS ECU—Improve Antilock brake function over bumpy surfaces.

2. Recall 13V–235 August 7, 2013—Replace Brake Booster/Pump assembly—Low brake pedal due to nitrogen bubble in hydraulic portion of brake system.

Conclusion

In the Agency's view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists. Therefore, in view of the need to allocate and prioritize NHTSA limited resources to best accomplish the Agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The Agency will take further action if warranted by future circumstances.

[2] Prius, Prius C, Prius V.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.95 and 501.8.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2014–17983 Filed 7–30–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: TreasuryDirect System

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 Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before September 29, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bureau of the Fiscal Service, Helen Reilly, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6179, or *helen.reilly@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: TreasuryDirect.

OMB Number: 1535–0138.

Abstract: The information collected in the electronic system is requested to establish a new account and process any associated transactions.

Current Actions: The Bureau of the Fiscal Service (Fiscal Service) offers Americans the opportunity to buy and hold Treasury securities directly with the Department of the Treasury. The retail program is geared toward small investors, most of them individuals who buy savings bonds and marketable Treasury securities. Investors create and manage electronic accounts via the Fiscal Service TreasuryDirect system.

Fiscal Service is exploring a strategy to reach new customers, develop new and innovative product delivery streams, and increase the number of available product offerings. In support of this strategy, Fiscal Service will introduce the Treasury Retail Investment Manager (TRIM) that will eventually replace the current TreasuryDirect system. TRIM will be more flexible and responsive to changing business needs for delivering digital investing needs.

Type of Review: Revision of a previously approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2.06 million.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 97,000De.

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: July 28, 2014.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2014–18052 Filed 7–30–14; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

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Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Assessment of Civil Penalties; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

[Docket No. MSHA–2014–0009]

RIN 1219–AB72

Criteria and Procedures for Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to amend its civil penalty regulation to simplify the criteria, which will promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties and facilitate the resolution of enforcement issues. The proposal would place a greater emphasis on the more serious safety and health conditions and provide improved safety and health for miners. MSHA is also proposing alternatives that would address the scope and applicability of its civil penalty regulation.

DATES: All comments must be received or postmarked by midnight Eastern Daylight Saving Time on September 29, 2014.

ADDRESSES: Comments and informational materials must be identified with ''RIN 1219–AB72'' and sent to MSHA by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for Docket Number MSHA–2014–0009.
- *Electronic Mail: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB72'' in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Facsimile:* 202–693–9441.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Availability of Information
II. Background
A. Statutory Background
B. Regulatory Background
III. Section-by-Section Analysis
A. §§ 100.1 and 100.2; Scope and Purpose; Applicability
B. General Discussion of § 100.3
C. § 100.3(b) The Appropriateness of the Penalty to the Size of the Business of the Operator Charged
D. § 100.3(c) History of Previous Violations
E. § 100.3(d) Negligence
F. § 100.3(e) Gravity
G. § 100.3(f) Demonstrated Good Faith of the operator in abating the violation
H. § 100.3(g) Penalty Conversion Table
I. § 100.3(h) The Effect of the Penalty on the Operator's Ability to Continue in Business
J. § 100.4 Unwarrantable Failure and Immediate Notification
IV. Proposed Alternatives to Change the Scope, Purpose, and Applicability of this Part
A. Regulatory Background and Commission Precedent
B. Proposed Alternatives to the Existing Approach to §§ 100.1 and 100.2
V. Preliminary Regulatory Economic Analysis
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Population at Risk
C. Benefits
D. Projected Impacts
VI. Feasibility
VII. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act
A. Definition of a Small Mine
B. Factual Basis for Certification
VIII. Paperwork Reduction Act of 1995
IX. Other Regulatory Considerations
A. The Unfunded Mandates Reform Act of 1995
B. Executive Order 13132: Federalism
C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
E. Executive Order 12988: Civil Justice Reform
F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

I. Availability of Information

Public Comments: MSHA posts all comments without change, including any personal information provided. Access comments electronically at *http://www.msha.gov/currentcomments.asp* and on *http://www.regulations.gov.* Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Email Notification: MSHA maintains a list that enables subscribers to receive an email notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx*.

II. Background

A. Statutory Background

Section 104 of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires MSHA to issue citations or orders to mine operators for any violations of a mandatory safety or health standard, rule, order, or regulation promulgated under the Mine Act. On issuing a citation or order, the Secretary's authorized representative (inspector) specifies a time for the safety or health condition to be abated. Sections 105 and 110 of the Mine Act require MSHA to propose a civil penalty for these violations. The Mine Act further requires assessment of civil penalties for violations. The following six criteria listed in §§ 105(b)(1)(B) and 110(i) of the Mine Act are used to determine civil penalties:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

30 U.S.C. 815(b)(1)(B), 820(i).

MSHA proposes a civil penalty assessment for each violation. On receipt of the proposed assessment, the mine operator has 30 days to contest the assessment before the Federal Mine Safety and Health Review Commission (Commission), an independent adjudicatory agency established under the Mine Act. A proposed assessment that is not contested within 30 days

becomes a final order of the Commission. If the mine operator chooses to contest the proposed penalty, the matter proceeds to a hearing before a Commission administrative law judge (ALJ). The ALJ then ''issue[s] an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty.'' 30 U.S.C. 815(d). The decision of the ALJ becomes the final order of the Commission unless the Commission decides to grant discretionary review within 40 days. 30 U.S.C. 823.

B. Regulatory Background

MSHA's civil penalty regulation at 30 CFR part 100 provides two methods for proposing civil penalties: regular formula assessments and special assessments. The regular assessment method, under which MSHA applies the civil penalty formula in §§ 100.3 and 100.4 to each violation, provides an appropriate proposed penalty for most violations. The special assessment method, in which MSHA manually applies the statutory penalty criteria, is used in a much smaller number of cases, such as those involving fatalities or willful violations. *See* § 100.5. This proposed rule involves changes to MSHA's regular assessment penalty formula only. Because the proposed rule would require MSHA to change the Citation/Order form (MSHA Form 7000–3), and MSHA considers the inspector's evaluations of the criteria in proposing penalties, the proposed rule also may have an indirect impact on special assessments.

Since 2010, MSHA has implemented special initiatives and promulgated rules to enhance accountability of mine operators for violations and hazards at their mines. MSHA intended that its actions would encourage mine operators to find and fix conditions and practices that could lead to violations of a safety or health standard meant to prevent hazardous conditions or practices. One initiative, ''Rules to Live By,'' identified the types of violations most likely to lead to an accident, injury, or illness. MSHA began conducting impact inspections at appropriate mines to focus attention on prevention of hazards and prompt, continuing correction of violations.

MSHA believes that its efforts have worked. Although the total number of mining operations in the United States decreased by approximately 0.5 percent from 2010 to 2013 (from 13,830 in 2010 to 13,760 in 2013), the number of violations for which MSHA proposed a regular formula assessment decreased by approximately 26 percent (from 164,500 in 2010 to 121,100 in 2013) and the percentage of violations contested decreased by approximately 6 percent (from 26 percent in 2010 to 20 percent in 2013). Reduced numbers of violations, however, does not preclude the need for improvement in the civil penalty assessment process.

MSHA analyzed the impact of the proposed rule by the type of mine and size of mine. The distribution of the penalty amount by mine size would remain generally the same; however, the penalty amount for small M/NM mines would decrease.

III. Section-by-Section Analysis

A. §§ 100.1 and 100.2; Scope and Purpose; Applicability

Existing §§ 100.1 and 100.2 limit the scope and applicability of part 100 to proposed civil penalties only. To enhance consistency and predictability in the assessment of civil penalties, MSHA is considering alternatives that would broaden the scope and applicability of part 100 to include both proposed and assessed penalties. Section IV of this preamble explains these alternatives and their rationale.

B. General Discussion of § 100.3

MSHA's proposal to amend § 100.3 is guided by four key principles:

(1) Improvement in consistency, objectivity, and efficiency in how inspectors write citations and orders by reducing the number of decisions needed;

(2) Simplification of penalty criteria, which should lead to fewer areas of dispute and earlier resolution of enforcement issues;

(3) Greater emphasis on the more serious safety and health conditions; and

(4) Openness and transparency in the application of the Agency's regular formula penalty criteria.

When issuing citations or orders, inspectors are required to evaluate safety and health conditions and to make decisions about five of the six statutory criteria. The proposed rule would simplify the gravity and negligence criteria and place an increased emphasis on the more serious hazards. Simplifying the criteria would increase objectivity and clarity in the citation and order process. The proposed changes should result in fewer areas of disagreement and earlier resolution of enforcement issues. The proposal would require corresponding changes to the Mine Citation/Order form (MSHA Form 7000–3).

The proposal is structured to encourage operators to be more accountable and proactive in addressing safety and health conditions at their mines. Under the proposal, total penalties proposed by MSHA would remain generally the same. The proposal would place an increased emphasis on Negligence, Violation History, and the Severity factor of Gravity to more appropriately address factors that directly impact miner safety and health. The proposal would place less emphasis on mine size, with slightly less emphasis on controller and contractor sizes.

Table 1 below shows the existing and proposed penalty point ranges for each of the criteria, including penalty point ranges as a percentage of the total maximum points under the existing and proposed rules. Proposed § 100.3 would reduce the maximum number of penalty points that could be assigned from 208 under the existing rule to 100.

TABLE 1—EXISTING AND PROPOSED PENALTY POINT RANGES

Criteria	Existing rule		Proposed rule	
	Penalty point range	Penalty point range as a percentage of total maximum points**(***)	Penalty point range	Penalty point range as a percentage of total maximum points***
Mine Size	0 to 15	0% to 7%	0 to 4	0% to 4%.
Controller Size	1 to 10	0.5% to 5%	1 to 4	1% to 4%.
Contractor Size *	0 to 25	0% to 12%	0 to 8	0% to 8%.
TOTAL Size Criterion	0 to 25	0% to 12%	0 to 8	0% to 8%.
Overall Violations	0 to 25	0% to 12%	0 to 16	0% to 16%.
Repeat Violations	0 to 20	0% to 10%	0 to 10	0% to 10%.
TOTAL Violation History Criterion.	0 to 45	0% to 22%	0 to 26	0% to 26%.

TABLE 1—EXISTING AND PROPOSED PENALTY POINT RANGES—Continued

Criteria	Existing rule		Proposed rule	
	Penalty point range	Penalty point range as a percentage of total maximum points**(***)	Penalty point range	Penalty point range as a percentage of total maximum points***
TOTAL Negligence Criterion	0 to 50	0% to 24%	0 to 30	0% to 30%.
Likelihood	0 to 50	0% to 24%	0 to 25	0% to 25%.
Severity	0 to 20	0% to 10%	0 to 10	0% to 10%.
Persons Affected	0 to 18	0% to 9%	0 to 1	0% to 1%.
TOTAL Gravity Criterion	0 to 88	0% to 42%	0 to 36	0% to 36%.
Total Maximum Points	208		100	

* Points for contractor size equal the sum of the points for mine and controller sizes for operators.
** Maximum points add to over 100 percent due to rounding.
*** Conversion uses 208 points for the existing rule and 100 points for the proposed rule.

In developing the proposal, MSHA evaluated the impact of the proposed changes using actual violation data. MSHA analyzed the 121,089 violations for which the Agency proposed assessments under the existing regular formula between January 1, 2013 and December 31, 2013 (baseline), the most recent year of available data. MSHA compared the impact of the proposed changes on individual penalties and on total penalties. First, the relative weights of the existing criteria were established as a benchmark by calculating the total points associated with each criterion as a percentage of total penalty points for all violations assessed against mine operators and independent contractors during the baseline period. Next, MSHA applied the proposed criteria to each violation assessed during the baseline period. For some criteria (e.g., Size and Violation History), the calculation was straightforward. For other criteria (e.g., Negligence and Gravity), MSHA made assumptions about how the inspector would evaluate degrees of negligence and gravity and allocated proposed penalty points so that the aggregate civil penalty amount proposed under the proposed rule would be comparable to the aggregate civil penalty amount proposed under the existing rule. Finally, the relative weight of each proposed criterion was determined by calculating total points associated with each criterion as a percentage of total penalty points that would have been assessed if the proposed rule had been in effect during the baseline period. The results of this analysis are presented in Table 2 below.

TABLE 2—COMPARISON OF RELATIVE WEIGHTS OF CRITERIA UNDER THE EXISTING AND PROPOSED RULES

Criteria	Existing rule		Proposed rule	
	Penalty points for criterion	% of total penalty points	Penalty points for criterion	% of total penalty points
Mine Size	853,482	10.9	218,902	5.7
Controller Size	661,044	8.5	272,712	7.1
Contractor Size	56,077	0.7	15,762	0.4
TOTAL Size Criterion	1,570,603	20.1	507,376	13.2
Overall Violations *	758,394	9.7	517,410	13.5
Repeat Violations	145,111	1.9	78,154	2.0
TOTAL Violation History Criterion *	903,505	11.6	595,564	15.5
TOTAL Negligence Criterion *	2,350,120	30.1	1,510,485	39.3
Likelihood	1,799,400	23.1	461,820	12.0
Severity *	953,235	12.2	651,120	17.0
Persons Affected	228,835	2.9	114,994	3.0
TOTAL Gravity Criterion	2,981,470	38.2	1,227,934	32.0
TOTAL Penalty Points for 121,089 violations	7,805,698		3,841,359	

* Proposal would increase the criterion's relative weight as a percentage of all penalty points.

MSHA's analysis indicates that the relative weights of penalty criteria would change under the proposed rule. The relative weights of the Size criterion, which reflects mine size, controller size, and contractor size, and the Gravity criterion, which reflects likelihood, severity, and persons affected, would decrease under the proposal. Although the total relative weight of the Gravity criterion would decrease, the relative weight of the Severity factor of the Gravity criterion would increase to reflect MSHA's increased emphasis on more serious hazards. The relative weights of the Violation History criterion, which reflects overall violations plus repeat violations, and the Negligence criterion would increase under the proposal.

C. § 100.3(b) The Appropriateness of the Penalty to the Size of the Business of the Operator Charged

Proposed § 100.3(b) would reduce the penalty points for operator and contractor size. The existing rule contains five tables assigning penalty points for size of coal mines, controlling entities of coal mines, metal and nonmetal mines (M/NM), controlling entities of M/NM mines, and independent contractors. The size of coal mines and their controlling entities is measured by the amount of coal production. The size of M/NM mines and their controlling entities is measured by the number of hours worked. The size of independent contractors is measured by the total number of hours worked by the independent contractor at all mines

regardless of the commodity being mined. Existing § 100.3(b) assigns up to 15 penalty points for mine size, up to 10 penalty points for the size of the controlling entity, and up to 25 penalty points for the size of independent contractors.

Under this provision, MSHA proposes to reduce the penalty points for mine size and controlling entity and decrease the number of penalty points for operators and independent contractors. The maximum number of penalty points would decrease from 15 to 4 for mine size, from 10 to 4 for size of controlling entity, and from 25 to 8 for size of independent contractor. As seen in Table 1 of this preamble, this proposed change would decrease the maximum points for this criterion as a percentage of total maximum points, from 12 percent (25/208) under the existing rule to 8 percent (8/100) under the proposed rule. As seen in Table 2 of this preamble, the proposed rule would decrease the relative weight of mine size (i.e., from 10.9 percent of total penalty points under the existing rule to 5.7 percent under the proposal); controller size (i.e., from 8.5 percent of total penalty points under the existing rule to 7.1 percent under the proposal); and contractor size (i.e., from 0.7 percent of total penalty points under the existing rule to 0.4 percent under the proposal). Refer to section VII.B. Factual Basis for Certification of this preamble for the explanation of MSHA's evaluation of the projected impact of the proposal on small entities.

PART 100 TABLE I—SIZE OF COAL MINE

Existing rule		Proposed rule	
Annual tonnage of mine (× 1,000)	Penalty points (out of maximum 208 points)	Annual tonnage of mine (× 1,000)	Penalty points (out of maximum 100 points)
0 to 7.5	1		
>7.5 to 10	2		
>10 to 15	3	0 to 50	1
>15 to 20	4		
>20 to 30	5		
>30 to 50	6		
>50 to 70	7		
>70 to 100	8		
>100 to 200	9	>50 to 500	2
>200 to 300	10		
>300 to 500	11		
>500 to 700	12	>500 to 1,000	3
>700 to 1,000	13		
>1,000 to 2,000	14	>1,000	4
>2,000	15		

PART 100 TABLE II—SIZE OF CONTROLLING ENTITY—COAL MINE

Existing rule		Proposed rule	
Annual tonnage (× 1,000)	Penalty points (out of maximum 208 points)	Annual tonnage (× 1,000)	Penalty points (out of maximum 100 points)
0 to 50	1		
>50 to 100	2	0 to 200	1
>100 to 200	3		
>200 to 300	4		
>300 to 500	5	>200 to 700	2
>500 to 700	6		
>700 to 1,000	7	>700 to 3,000	3
>1,000 to 3,000	8		
>3,000 to 10,000	9	>3,000	4
>10,000	10		

PART 100 TABLE III—SIZE OF METAL/NONMETAL MINE

Existing rule		Proposed rule	
Annual hours worked at mine (× 1,000)	Penalty points (out of maximum 208 points)	Annual tonnage of mine (× 1,000)	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
>5 to 10	1		
>10 to 20	2		
>20 to 30	3		
>30 to 50	4	>5 to 200	1
>50 to 100	5		
>100 to 200	6		
>200 to 300	7		

PART 100 TABLE III—SIZE OF METAL/NONMETAL MINE—Continued

Existing rule		Proposed rule	
Annual hours worked at mine (× 1,000)	Penalty points (out of maximum 208 points)	Annual tonnage of mine (× 1,000)	Penalty points (out of maximum 100 points)
>300 to 500	8		
>500 to 700	9	>200 to 1,500	2
>700 to 1,000	10		
>1,000 to 1,500	11		
>1,500 to 2,000	12	>1,500 to 3,000	3
>2,000 to 3,000	13		
>3,000 to 5,000	14	>3,000	4
>5,000	15		

PART 100 TABLE IV—SIZE OF CONTROLLING ENTITY—METAL/NONMETAL MINE

Existing rule		Proposed rule	
Annual hours worked (× 1,000)	Penalty points (out of maximum 208 points)	Annual hours worked (× 1,000)	Penalty points (out of maximum 100 points)
0 to 50	0	0 to 50	0
>50 to 100	1		
>100 to 200	2	>50 to 300	1
>200 to 300	3		
>300 to 500	4		
>500 to 1,000	5	>300 to 2,000	2
>1,000 to 2,000	6		
>2,000 to 3,000	7	>2,000 to 5,000	3
>3,000 to 5,000	8		
>5,000 to 10,000	9	>5,000	4
>10,000	10		

PART 100 TABLE V—SIZE OF INDEPENDENT CONTRACTOR

Existing rule		Proposed rule	
Annual hours worked at all mines (× 1,000)	Penalty points (out of maximum 208 points)	Annual hours worked at all mines (× 1,000)	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
>5 to 7	2	>5 to 10	1
>7 to 10	4		
>10 to 20	6	>10 to 30	2
>20 to 30	8		
>30 to 50	10	>30 to 70	3
>50 to 70	12		
>70 to 100	14	>70 to 200	4
>100 to 200	16		
>200 to 300	18	>200 to 500	5
>300 to 500	20		
>500 to 700	22	>500 to 700	6
>700 to 1,000	24	>700 to 1,000	7
>1,000	25	>1,000	8

D. § 100.3(c) History of Previous Violations

The proposal would revise § 100.3(c), history of previous violations, to increase the penalty points for this criterion as a percentage of total penalty points. Existing § 100.3(c) bases the operator's violation history on the total number of violations and the number of repeat violations of the same citable provision of a standard in the 15-month period preceding the occurrence date of the violation being assessed. The existing rule states that only ''violations that have been paid, finally adjudicated, or have become final orders of the Commission'' (final orders) are included in determining an operator's violation history. MSHA is proposing to clarify its intent under the existing rule that only ''violations that have become final orders of the Commission'' are included in determining an operator's violation history. This proposed change is nonsubstantive and would reduce confusion and more accurately reflect the Agency's intent to use only violations that became final orders during the 15-month period preceding the occurrence date of the violation being assessed in calculating violation history.

Under the existing rule, operators are assigned penalty points based on the number of Violations Per Inspection Day

and the number of Repeat Violations Per Inspection Day. For independent contractors, penalty points are assigned on the basis of the total number of violations and total number of repeat violations at all mines. MSHA is proposing to clarify paragraph (c) by removing the reference to paragraph (c)(2) and stating directly in paragraph (c)(2) when the repeat aspect of the Violation History criterion applies.

As shown in Table 2 of this preamble, the proposed changes would increase the relative weight for the History of Violations criterion penalty points from 11.6 percent of total penalty points under the existing rule to 15.5 percent under the proposed rule. The relative weight for overall violations penalty points would increase from 9.7 percent of total penalty points under the existing rule to 13.5 percent under the proposal, in recognition of the importance of the need for operators to prevent violations from occurring. The relative weight for repeat violations penalty points would remain unchanged at approximately 2 percent of total penalty points under the existing and proposed rules.

1. History of Overall Violations

MSHA is proposing to change how an operator's overall violation history would be determined. The Violations Per Inspection Day formula under the existing rule may result in relatively high violation history points that do not reflect conditions at the smaller M/NM operations. At these mines, a small number of violations over a one or two-day inspection can result in a relatively high Violations Per Inspection Day rate. During the baseline period, 12 percent of the M/NM violations received the maximum 25 points compared with one percent of the coal violations. MSHA's proposed revision would address this concern. Tables 3 and 4 below show the distributions of penalty points for Violations Per Inspection Day for mines under the existing and the proposed rules.

TABLE 3—EXISTING DISTRIBUTION OF PENALTY POINTS FOR VIOLATIONS PER INSPECTION DAY

Points	Coal mines		M/NM mines		Total
0	8,713	14%	28,042	55%	36,755
2	10,816	18%	1,322	3%	12,138
5	15,917	26%	2,432	5%	18,349
8	11,590	19%	2,543	5%	14,133
10	5,240	9%	2,784	5%	8,024
12	3,449	6%	2,319	5%	5,768
14	2,543	4%	1,895	4%	4,438
16	1,124	2%	1,519	3%	2,643
19	655	1%	1,296	3%	1,951
22	318	1%	1,016	2%	1,334
25	589	1%	6,215	12%	6,804
Total	60,954		51,383		112,337

TABLE 4—PROJECTED DISTRIBUTION OF PENALTY POINTS FOR VIOLATIONS PER INSPECTION DAY UNDER THE PROPOSED RULE

Points	Coal mines		M/NM mines		Total
0	8,862	15%	34,519	67%	43,381
2	10,816	18%	1,322	3%	12,138
5	15,917	26%	2,432	5%	18,349
8	11,590	19%	2,543	5%	14,133
10	5,237	9%	2,694	5%	7,931
11	3,433	6%	2,020	4%	5,453
12	2,529	4%	1,432	3%	3,961
13	1,113	2%	1,060	2%	2,173
14	628	1%	831	2%	1,459
15	312	1%	607	1%	919
16	517	1%	1,923	4%	2,440
Total	60,954		51,383		112,337

The proposed rule would provide for a more equitable impact of the Violations Per Inspection Day formula on small mines. The existing rule assigns zero points when a mine has fewer than 10 violations that became final orders over the 15-month period preceding the occurrence date of the violation being assessed. Under the proposal, MSHA would assign zero points when a mine has either fewer than 10 violations or 10 or fewer inspection days over the 15-month period preceding the occurrence date of the violation being assessed. MSHA analyzed this approach using historical data from the baseline period and determined that although it would reduce the impact of Violations Per Inspection Day on smaller mines, it would continue to hold operators of small mines accountable for repeat violations.

MSHA is proposing to restructure the point tables related to Violation History to reflect a modest increase in the relative weight of this criterion. Part 100 Table VI shows both the existing and proposed point schedules for overall history of violations for mine operators. Part 100 Table VII shows both the existing and proposed point schedules for overall history of violations for independent contractors. Under the proposal, the maximum number of penalty points for Violation History would decrease from 25 to 16 for both mine operators and independent contractors.

PART 100 TABLE VI—HISTORY OF PREVIOUS VIOLATIONS—MINE OPERATORS*

Overall history: number of violations per inspection day	Existing penalty points (out of maximum 208 points)	Proposed penalty points (out of maximum 100 points)
0 to 0.3	0	0
>0.3 to 0.5	2	2
>0.5 to 0.7	5	5
>0.7 to 0.9	8	8
>0.9 to 1.1	10	10
>1.1 to 1.3	12	11
>1.3 to 1.5	14	12
>1.5 to 1.7	16	13
>1.7 to 1.9	19	14
>1.9 to 2.1	22	15
>2.1	25	16

* Under the proposal, MSHA would assign zero points when a mine has either fewer than 10 violations that became final orders or 10 or fewer inspection days over the 15-month period preceding the occurrence date of the violation being assessed.

PART 100 TABLE VII—HISTORY OF PREVIOUS VIOLATIONS—INDEPENDENT CONTRACTORS*

Existing rule		Proposed rule	
Overall history: number of violations at all mines	Penalty points (out of maximum 208 points)	Overall history: number of violations at all mines	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
6	1	6–7	1
7	2		
8	3	8–9	2
9	4		
10	5	10–11	3
11	6		
12	7	12–13	4
13	8		
14	9	14–15	5
15	10		
16	11	16–17	6
17	12		
18	13	18–19	7
19	14		
20	15	20–21	8
21	16		
22	17	22–23	9
23	18		
24	19	24	10
25	20	25	11
26	21	26	12
27	22	27	13
28	23	28	14
29	24	29	15
>29	25	>29	16

* Under the proposal, MSHA would assign zero points when an independent contractor has fewer than six violations that became final orders over the 15-month period preceding the occurrence date of the violation being assessed.

MSHA is interested in alternatives that address the proposed point tables for Violation History for mine operators and independent contractors. MSHA is particularly interested in alternatives that address the impact of the proposed Violations Per Inspection Day formula on small mine operators with fewer than 10 violations that became final orders or 10 or fewer inspection days over the 15-month period preceding the occurrence date of the violation being assessed. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternative.

2. History of Repeat Violations

The proposed rule would clarify that the repeat violations aspect of the proposal would apply only after—

- A mine operator has, over the 15-month period preceding the occurrence date of the violation being assessed—
  - A minimum of 10 violations, which became final orders, and
  - More than 10 inspection days, and
  - Six repeat violations of the same citable provision of a standard, which became final orders; or
- An independent contractor has, over the 15-month period preceding the occurrence date of the violation being assessed—
  - A minimum of six violations at all mines, which became final orders, and
  - Six repeat violations of the same citable provision of a standard, which became final orders.

MSHA proposes to revise the point tables for repeat violations of the same

standard to reduce the penalty points from a maximum of 20 points to a maximum of 10 points. This proposed change would not result in a change in the maximum points for this criterion as a percentage of total maximum points, as it is currently 10 percent.

The proposed point structure would lower the value at which a mine operator would receive the maximum penalty points for Repeat Violations Per Inspection Day from >1.0 under the existing rule to >0.5 under the proposed rule because a history of repeat violations demonstrates a lack of concern for the safety and health of miners. Higher penalties for these operators would serve to encourage them to be more proactive in their approach to safety and health and prevent safety and health hazards before they occur.

Part 100 Tables VIII and IX in this preamble show both the existing and proposed point schedules for Repeat Violations.

PART 100 TABLE VIII—HISTORY OF PREVIOUS VIOLATIONS—REPEAT VIOLATIONS FOR COAL AND METAL/NONMETAL MINE OPERATORS WITH A MINIMUM OF SIX REPEAT VIOLATIONS*

Existing rule		Proposed rule	
Number of repeat violations per inspection day	Penalty points (out of maximum 208 points)	Number of repeat violations per inspection day	Penalty points (out of maximum 100 points)
0 to 0.01	0	0 to 0.01	0
>0.01 to 0.015	1	>0.01 to 0.02	1
>0.015 to 0.02	2		
>0.02 to 0.025	3	>0.02 to 0.03	2
>0.025 to 0.03	4		
>0.03 to 0.04	5	>0.03 to 0.05	3
>0.04 to 0.05	6		
>0.05 to 0.06	7	>0.05 to 0.08	4
>0.06 to 0.08	8		
>0.08 to 0.10	9	>0.08 to 0.12	5
>0.10 to 0.12	10		
>0.12 to 0.14	11	>0.12 to 0.16	6
>0.14 to 0.16	12		
>0.16 to 0.18	13	>0.16 to 0.20	7
>0.18 to 0.20	14		
>0.20 to 0.25	15	>0.2 to 0.3	8
>0.25 to 0.3	16		
>0.3 to 0.4	17	>0.3 to 0.5	9
>0.4 to 0.5	18		
>0.5 to 1.0	19	>0.5	10
>1.0	20		

* Under the proposal, MSHA would assign zero points when a mine has either fewer than 10 violations that became final orders or 10 or fewer inspection days, and fewer than six repeat violations that became final orders, over the 15-month period preceding the occurrence date of the violation being assessed.

PART 100 TABLE IX—HISTORY OF PREVIOUS VIOLATIONS—REPEAT VIOLATIONS FOR INDEPENDENT CONTRACTORS*

Number of repeat violations of the same standard at all mines	Existing penalty points (out of maximum 208 points)	Proposed penalty points (out of maximum 100 points)
<6	0	0
6	2	1
7	4	2
8	6	3
9	8	4
10	10	5
11	12	6
12	14	7
13	16	8
14	18	9
>14	20	10

* Under the proposal, MSHA would assign zero points when an independent contractor has fewer than six violations or fewer than six repeat violations that became final orders over the 15-month period preceding the occurrence date of the violation being assessed.

MSHA is interested in comments that address alternatives to the proposed revisions to the point tables for Repeat Violations Per Inspection Day for mine operators and Total Number of Repeat Violations at All Mines for independent contractors. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternative.

E. § 100.3(d) Negligence

Proposed § 100.3(d) would revise the negligence criterion to increase accountability for operators who either knew, or should have known, of safety and health hazards at their mines. It would reduce the number of negligence

categories from five to three. The existing rule lists the following five categories that MSHA uses to evaluate the degree of negligence involved with a violation:

(1) *No Negligence* means that the operator exercised diligence and could not have known of the violative condition or practice.

(2) *Low Negligence* means that the operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.

(3) *Moderate Negligence* means that the operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.

(4) *High Negligence* means the operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.

(5) *Reckless Disregard* means the operator displayed conduct that exhibits the absence of the slightest degree of care.

In the majority of contested cases before the Commission, the issue is not whether a violation occurred. Rather, the parties disagree on the gravity of the violation, the degree of mine operator negligence, and other criteria.

Regarding negligence, § 105(b)(1)(B) of the Mine Act requires that the Secretary determine whether the operator was negligent. MSHA believes that reducing the number of negligence categories would improve objectivity and consistency in the evaluation of negligence, resulting in fewer areas of disagreement, thereby facilitating resolution of enforcement issues. The proposal would reduce the existing five categories of negligence to three: (1) Not Negligent; (2) Negligent; or (3) Reckless Disregard. The proposed reduction in the number of categories would not change the definitions of the remaining categories, with one exception. The definition of Negligent would read that ''The operator knew or should have known about the violative condition or practice.'' The existing Mine Citation/Order form (MSHA Form 7000–3) that MSHA inspectors use when issuing citations and orders would also be revised to reflect the proposed changes.

Correspondingly, the proposed rule would restructure the point table for the proposed categories to reflect an increase in the relative weight of this criterion. MSHA believes that this proposed change would result in assessments that appropriately reflect actions under the control of operators that have a direct impact on miner safety and health. Part 100 Table X in this preamble shows the existing and proposed schedules for negligence.

Under the proposal, the maximum number of penalty points for this criterion would decrease from 50 to 30 and the maximum points as a percentage of total maximum points would increase from 24 percent to 30 percent. Under the proposed rule, points for ''No Negligence'' would not change. Penalty points assigned under the remaining two categories of negligence would decrease from the values under the existing regulation. As shown in Table 2 of this preamble, MSHA's evaluation of the impact of the proposed changes, based on baseline violation data, indicates that the relative weight of Negligence penalty points would increase from 30 percent of total penalty points under the existing rule to 39 percent of total penalty points under the proposed rule.

PART 100 TABLE X—NEGLIGENCE

Existing rule		Proposed rule	
Categories	Penalty points (out of maximum 208 points)	Categories	Penalty points (out of maximum 100 points)
No Negligence (The operator exercised diligence and could not have known of the violative condition or practice.).	0	*Not Negligent* (The operator exercised diligence and could not have known of the violative condition or practice.).	0
Low Negligence (The operator knew or should have known about the violative condition or practice, but there are considerable mitigating circumstances.).	10		
Moderate Negligent (The operator knew or should have known about the violative condition or practice, but there are mitigating circumstances.).	20	*Negligent* (The operator knew or should have known about the violative condition or practice.).	15
High Negligence (The operator knew or should have known about the violative condition or practice, but there are mitigating circumstances.).	35		
Reckless Disregard (The operator displayed conduct which exhibits the absence of the slightest degree of care.).	50	*Reckless Disregard* (The operator displayed conduct which exhibits the absence of the slightest degree of care.).	30

MSHA is interested in comments that address alternatives to improving consistency and objectivity in the application of the proposed negligence criterion. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternative.

F. § 100.3(e) Gravity

Proposed § 100.3(e) would revise the existing gravity criterion to reduce the overall impact of this criterion, but increase the aspect of the criterion as it relates to more serious hazards.

The existing rule provides three factors to measure the gravity of a violation: (1) the likelihood of the occurrence of an event against which a standard is directed (five categories for a maximum of 50 points); (2) the severity of injury or illness if the event occurred or were to occur (four categories for a maximum of 20 points); and (3) the number of persons potentially affected if the event occurred or were to occur (11 categories for a maximum of 18 points). MSHA is proposing to adjust the maximum number of penalty points for the Gravity criterion from 88 total points under the

existing rule to 36 total points under the proposed rule and redistribute the weights of penalty points to reflect an increased emphasis on the severity of safety and health hazards.

The proposed provision would retain the three Gravity factors but would reduce the number of subcategories associated with each factor. Similar to the Agency's proposed changes to the Negligence criterion, the proposal would simplify the categories in each proposed Gravity factor to decrease subjectivity and improve objectivity and consistency. MSHA believes that the Likelihood of the occurrence of an event that could result in an injury or illness and the Severity of a potential injury or illness if the event were to occur, are both important to miner safety and health. The proposal, however, would decrease the relative weight of Likelihood penalty points and increase the relative weight of Severity penalty points as a percentage of total penalty points. Tables XI through XIII show both the existing and the proposed points for the three Gravity criterion factors.

Likelihood. The proposal would reduce the existing five categories of Likelihood of the occurrence of an event against which a standard is directed to three: (1) Unlikely; (2) Reasonably Likely; or (3) Occurred. It would combine the existing categories of ''No Likelihood'' and ''Unlikely'' to improve objectivity and consistency of enforcement. Also to improve consistency, the proposal would eliminate the ''Highly Likely'' category. Part 100 Table XI would include a proposed definition for each category. These proposed changes would simplify the enforcement process, improve objectivity and consistency, and improve safety and health protection for miners.

The proposal would restructure the point table to reflect a decrease in the relative weight of Likelihood. As shown in Table 2 of this preamble, MSHA's evaluation of the impact of the proposed changes, based on baseline violation data, indicates that the relative weight of Likelihood is projected to decrease from 23.1 percent of total penalty points under the existing rule to 12.0 percent under the proposal.

Part 100 Table XI in this preamble shows the existing and proposed penalty point schedule for Likelihood. The maximum number of penalty points would decrease from 50 under the existing rule to 25 under the proposal. Under the proposed rule, ''Unlikely'' would not accrue any points. The proposed penalty points assigned to ''Reasonably Likely'', as a percentage of total penalty points, would remain about the same. The proposed maximum points for Likelihood, like the existing rule, would be 25 percent of total maximum points.

PART 100 TABLE XI—GRAVITY: LIKELIHOOD

Existing rule		Proposed rule	
Likelihood of occurrence	Penalty points (out of maximum 208 points)	Likelihood of occurrence	Penalty points (out of maximum 100 points)
No Likelihood	0	*Unlikely* (Condition or practice cited has little or no likelihood of causing an event that could result in an injury or illness.).	0
Unlikely	10		
Reasonably Likely	30	*Reasonably Likely* (Condition or practice cited is likely to cause an event that could result in an injury or illness.).	14
Highly Likely	40		
Occurred	50	*Occurred* (Condition or practice cited has caused an event that has resulted or could have resulted in an injury or illness.).	25

MSHA solicits comments on alternatives to the proposed Likelihood factor of the Gravity criterion that would improve objectivity and consistency in enforcement. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternative.

Severity. The proposal would reduce the four existing categories of severity of injury or illness to three: (1) No Lost Workdays; (2) Lost Workdays or Restricted Duty; or (3) Fatal. It would eliminate the existing ''Permanently Disabling'' category, which is often difficult to anticipate. Consistent with proposed changes for other criteria, MSHA believes that reducing the number of categories would simplify the Severity factor, resulting in improved objectivity and consistency in the enforcement process.

The proposal would restructure the point table to reflect a moderate increase in the relative weight of the maximum points for Severity. Part 100 Table XII in this preamble shows the existing and proposed points for each Severity category. The proposal would reduce the maximum points for Severity from 20 points under the existing rule to 10 points. Under the proposal, points for ''No Lost Work Days'' would not change. The proposal would decrease penalty points assigned to the remaining two categories. The proposed definitions of the remaining Severity categories would not change. The proposed rule would result in no change in the maximum points for this Gravity criterion as a percentage of total maximum points, remaining at 10 percent. As shown in Table 2 of this preamble, MSHA's evaluation of the impact of the proposed changes, based on baseline violation data, indicates that the relative weight of the Severity penalty points would increase from 12.2 percent of total penalty points under the existing rule to 17.0 percent under the proposal, appropriately reflecting the impact of the Severity factor on the safety and health of miners.

PART 100 TABLE XII—GRAVITY: SEVERITY

Existing rule		Proposed rule	
Severity of injury or illness if the event has occurred or were to occur	Penalty points (out of maximum 208 points)	Severity of injury or illness If the event has occurred or were to occur	Penalty points (out of maximum 100 points)
No lost work days (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.).	0	*No lost work days* (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.).	0
Lost workdays or restricted duty (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.).	5	*Lost work days or restricted duty* (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.).	5
Permanently disabling (Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.).	10		
Fatal (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.).	20	*Fatal* (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.).	10

MSHA is particularly interested in comments that address alternatives to improve consistency and objectivity in the application of the Severity factor of the Gravity criterion. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternatives.

Persons Affected. The proposed rule would simplify this Gravity factor to improve objectivity and consistency in the enforcement process. Part 100 Table XIII shows the existing and proposed penalty points for the number of persons affected. The existing Gravity factor related to persons affected is currently comprised of 11 categories ranging from zero persons potentially affected to 10 or more. The proposal would reduce the 11 categories into two: no persons are affected and one or more persons are affected. This proposed change would eliminate the need for MSHA inspectors to estimate how many persons potentially would be affected if the event were to occur, thereby reducing contests related to the inspector's estimates. The proposal would revise the point table to reflect the reduction in the number of categories. Consistent with the existing rule, if no persons are affected, no points would be assigned. If persons are affected or potentially affected, one point would be assigned regardless of the number of persons.

This proposed change would decrease the maximum points for this criterion as a percentage of total maximum points, from 9 percent under the existing rule to 1 percent under the proposed rule. As shown in Table 2 of this preamble, MSHA's evaluation of the impact of the proposed changes, based on baseline violation data, indicates that the relative weight of Persons Affected penalty points would remain unchanged from the existing rule, at 3 percent of total penalty points.

PART 100 TABLE XIII—GRAVITY: PERSONS POTENTIALLY AFFECTED

Existing rule		Proposed rule	
Number of persons potentially affected if the event has occurred or were to occur	Penalty points (out of maximum 208 points)	Persons potentially affected if the event has occurred or were to occur	Penalty points (out of maximum 100 points)
0	0	No (No persons are affected by the condition or practice cited.)	0
1	1		
2	2		
3	4		
4	6	Yes (One or more persons are affected by the condition or practice cited.).	1
5	8		
6	10		
7	12		
8	14		
9	16		
10 or more	18		

MSHA is interested in comments that address alternatives to the proposed rule that would improve objectivity and consistency in the application of the Persons Affected factor of the Gravity criterion. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any comment or suggested alternative.

G. § 100.3(f) Demonstrated Good Faith of the Operator in Abating the Violation

The proposal, like existing § 100.3(f), would provide for a 10 percent

reduction in the penalty amount of a regular assessment where the operator abates the violation within the time set by the inspector. Under the proposal, operators could save up to $8 million (based on Table 12 in this preamble) in penalty reductions for prompt abatement of violations within the time set by the inspector.

In an effort to provide for increased operator focus on prevention of safety and health hazards, MSHA is considering an alternative that would recognize both prompt operator abatement of safety and health hazards as well as prompt payment of proposed penalties. Consistent with the statute, and with the prior civil penalty regulation, this alternative would provide an additional 20 percent Good Faith reduction in proposed penalties when neither the penalty nor the violation is contested and the penalty is paid before it becomes a final order of the Commission. Under this alternative, operators that promptly abate safety and health hazards and promptly pay the penalties associated with the violations could be eligible for up to a 30 percent overall Good-Faith reduction in the amount of the penalties. MSHA would provide these incentives to encourage operators to allocate more resources for the prevention of safety and health hazards.

MSHA is interested in comments that address this alternative, including other alternatives that would encourage operators to resolve enforcement issues quickly and increase resources allocated to improving the safety and health of miners. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternatives.

H. § 100.3(g) Penalty Conversion Table

As described in the preceding sections for each of the proposed criteria, MSHA proposes to revise the penalty point tables for each criterion. The proposed penalty conversion table would retain the existing minimum penalty of $112 and the maximum penalty of $70,000 for non-flagrant violations. The proposal would reduce the maximum number of penalty points from 208 to 100.

The penalty conversion table in existing § 100.3(g) converts the total penalty points associated with a citation or order into penalties starting at $112 when the point total is 60 or fewer to $70,000 when the point total is 144 or more. The proposal would revise the penalty conversion table to convert total points from ''31 or fewer'' to ''73 or more'' into penalties from $112 to $70,000, respectively.

Except for the points assigned to the minimum and maximum penalty, the proposed penalty conversion table combines two methods of converting points to dollars. The lower section of the proposed table (32 to 62 points) reflects an exponential curve and the upper section (>62 to >73 points) is linear. The proposed table starts at $112 when the number of points associated with a citation or order is 31 or fewer. Each additional point from 32 up to 62 would increase the penalty dollar value by an average of 17 percent, or a range of 5 to 25 percent. The proposed penalty dollar value assigned for 62 points is $15,000. Above 62 points the proposed penalty dollar value would increase by $5,000 for each penalty point to a maximum of $70,000 at 73 or more points. MSHA's evaluation of the impact of the proposed changes to criteria categories and the penalty points, based on baseline violation data, indicates that estimated aggregate monetary penalties under the proposed rule would remain basically the same as under the existing rule.

Part 100 Table XIV below shows the existing and the proposed penalty conversion tables.

PART 100 TABLE XIV—PENALTY CONVERSION TABLE

Existing points	Existing penalty ($)	Proposed points	Proposed penalty ($)
60 or fewer	112	31 or fewer	112
61	121	32	118
62	131	33	124
63	142	34	150
64	154		
65	167	35	175
66	181		
67	196	36	200
68	212		
69	230	37	250
70	249		
71	270		
72	293	38	300
73	317		
74	343	39	350
75	372		
76	403	40	400
77	436	41	450
78	473		
79	512	42	500
80	555		
81	601	43	600
82	651		
83	705	44	700
84	764		
85	828	45	800
86	897		
87	971	46	1,000
88	1,052		
89	1,140	47	1,200
90	1,235		
91	1,337	48	1,400

PART 100 TABLE XIV—PENALTY CONVERSION TABLE—Continued

Existing points	Existing penalty ($)	Proposed points	Proposed penalty ($)
92	1,449		
93	1,569	49	1,600
94	1,700		
95	1,842	50	1,800
96	1,995	51	2,000
97	2,161		
98	2,341	52	2,500
99	2,536		
100	2,748		
101	2,976	53	3,000
102	3,224		
103	3,493		
104	3,784	54	3,500
105	4,099		
106	4,440		
107	4,810	55	4,000
108	5,211		
109	5,645	56	5,000
110	6,115		
111	6,624		
112	7,176	57	6,000
113	7,774	58	7,000
114	8,421		
115	9,122	59	8,000
116	9,882	60	9,000
117	10,705		
118	11,597	61	10,000
119	12,563		
120	13,609	62	15,000
121	14,743		
122	15,971		
123	17,301		
124	18,742	63	20,000
125	20,302		
126	21,993		
127	23,825	64	25,000
128	25,810		
129	27,959	65	30,000
130	30,288		
131	32,810	66	35,000
132	35,543		
133	38,503	67	40,000
134	41,574		
135	44,645	68	45,000
136	47,716	69	50,000
137	50,787		
138	53,858	70	55,000
139	56,929		
140	60,000	71	60,000
141	63,071		
142	66,142	72	65,000
143	69,213		
144 or more	70,000	73 or more	70,000

I. § 100.3(h) The Effect of the Penalty on the Operator's Ability To Continue in Business

Except for a non-substantive change, proposed § 100.3(h), related to the effect of the penalty on the operator's ability to continue in business, would not change. Under the existing rule, MSHA presumes that the operator's ability to continue in business would not be affected by the assessment of a civil penalty. Under the existing rule, the operator may submit information to the District Manager concerning the financial status of the business.

The proposal would require that operators notify and submit financial information to the Office of Assessments, Accountability, Special Enforcement and Investigations (OAASEI), rather than the District Manager, that civil penalties would affect their ability to continue in business. This proposal would be a non-substantive change to align the proposal with MSHA's procedures for processing financial hardship claims. Under existing procedures, MSHA's OAASEI reviews the financial documents operators submit. This proposed change would simplify and expedite that process.

J. § 100.4 Unwarrantable Failure and Immediate Notification

The Mine Improvement and New Emergency Response Act (MINER Act) established minimum penalties for citations and orders issued under

§ 104(d) of the Mine Act, that resulted from an operator's unwarrantable failure to comply with mandatory safety and health standards. MSHA believes that operators and independent contractors who receive citations and orders designated as unwarrantable failures do not demonstrate appropriate safety and health management practices that provide for optimum safety and health conditions for miners.

MSHA is proposing to increase the minimum penalties for unwarrantable failures by 50 percent to provide greater deterrence for operators who allow these types of violations to occur. The proposed rule would hold operators accountable for their actions as well as encourage more diligent compliance. Under the proposal, the minimum penalty for any citation or order issued under § 104(d)(1) of the Mine Act would be $3,000, and the minimum penalty for orders under § 104(d)(2) would be $6,000.

MSHA is interested in comments that address this proposed change, including the deterrent effect on safety and health hazards. MSHA is also interested in alternatives that would improve safety and health conditions for miners. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any suggested alternative.

IV. Proposed Alternatives To Change the Scope, Purpose, and Applicability of This Part

Existing §§ 100.1 and 100.2 limit the scope and applicability of 30 CFR part 100 to proposed civil penalties only. To enhance consistency and predictability in the assessment of civil penalties, MSHA is considering two alternatives that would broaden the scope and applicability of part 100 to include both proposed and assessed penalties. MSHA solicits comments on these alternatives, as well as on whether and why MSHA should retain the existing language.

A. Regulatory Background and Commission Precedent

The Mine Act requires that both the Secretary's penalty proposals and the Commission's penalty assessments reflect the same six statutory penalty criteria. The criteria are general in nature; each criterion requires further interpretation or elaboration before it can be applied to the facts of a particular case. The statute does not detail how the six statutory criteria should be balanced when determining an appropriate civil penalty. Both the exercise of proposing and the exercise of assessing an appropriate civil penalty, therefore, involve interpreting the statutory penalty criteria and determining a method for balancing each criterion's relative weight. Under the existing rule and legal precedent, MSHA and the Commission take different approaches to these tasks.

1. MSHA's Approach to Proposing Civil Penalties

MSHA's regular assessment penalty formula interprets the six statutory civil penalty criteria and establishes a policy for balancing the criteria and arriving at a proposed penalty amount. Under existing and proposed § 100.3, MSHA interprets the six statutory penalty criteria to give each criterion more specificity.

Operator History: The first statutory criterion instructs that a penalty should reflect ''the operator's history of previous violations.'' Both existing and proposed § 100.3(c) interpret this criterion by (1) establishing the relevant time period; (2) distinguishing between the total number of violations and the number of repeat violations of the same provision; and (3) establishing that only violations that have become final orders of the Commission will be used to determine an operator's history.

Operator Size: The second statutory criterion requires consideration of ''the appropriateness of such penalty to the size of the business of the operator charged,'' but does not provide any details regarding how ''size'' should be calculated or compared. Both existing and proposed § 100.3(b) interpret this criterion by specifying that: (1) ''Size'' refers both to the size of the mine cited and to the size of the mine's controlling entity; (2) ''size'' is measured in terms of hours worked in the case of metal and nonmetal mines and by production in the case of coal mines; and (3) in the case of independent contractors, ''size'' is measured in terms of hours worked at all mines.

Negligence: The third statutory criterion states that a penalty should reflect ''whether the operator was negligent.'' Both existing and proposed § 100.3(d) interpret this criterion by defining the term ''negligence'' as ''conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risk of harm.'' Both existing and proposed § 100.3(d) further specify that ''[u]nder the Mine Act, an operator is held to a high standard of care.'' Finally, both existing and proposed § 100.3(d) create and define categories of negligence and assign penalty points based on the degree to which the operator failed to exercise a high standard of care.

Effect on Business: The fourth statutory criterion states that a penalty should reflect ''the effect on the operator's ability to continue in business.'' Both existing and proposed § 100.3(h) establish a presumption that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. Both existing and proposed § 100.3(h) also provide for the operator to submit financial information to MSHA and for MSHA to reduce the penalty as appropriate.

Gravity: The fifth statutory criterion states that a penalty should reflect ''the gravity of the violation.'' Both existing and proposed § 100.3(e) define gravity as an evaluation of the seriousness of the violation and specify that gravity is determined by three factors: Likelihood, severity, and the number of persons potentially affected. Section 100.3(e) defines likelihood as the likelihood of the occurrence of the event against which a standard is directed and severity as the severity of the illness or injury if the event has occurred or were to occur. Proposed § 100.3 would retain the three existing gravity factors, but would reduce the number of possible categories within each factor, and define each category.

Operator's Good Faith: Finally, the sixth statutory criterion states that a penalty should reflect ''the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.'' Existing § 100.3(f) defines good faith as abatement of the violation within the time set by the inspector and provides for a 10 percent reduction in the penalty when the mine operator meets the inspector's deadline. In this proposed rule, MSHA is considering redefining good faith to include both prompt abatement of safety and health hazards and prompt payment of proposed penalties.

In addition to providing a substantive interpretation of each statutory criterion, § 100.3 also establishes a formula for converting MSHA's factual allegations under the six criteria into a dollar amount. Mine operators accumulate penalty points under each criterion according to the tables throughout § 100.3. Through the penalty point tables, contained in each subsection of § 100.3, the Secretary adjusts the relative importance of the six statutory penalty criteria.

The sum of penalty points is then converted into a dollar amount using the penalty conversion table in § 100.3(g). The conversion table at § 100.3(g) sets penalties at the level the Secretary considers necessary to protect

the safety and health of miners, consistent with the statutory criteria and penalty limits set by Congress. In 2007, the Secretary's revision to part 100 was explicitly intended to result in an across-the-board increase in penalties to increase the incentives for mine operators to prevent and correct violations. Criteria and Procedures for Proposed Assessment of Civil Penalties, March 22, 2007 (72 FR 13592). Under the provisions in this proposed rule, the total amount of penalties assessed by MSHA would remain generally the same, but the emphasis on certain criteria would be adjusted.

When MSHA proposes civil penalties, it provides the operator with an exhibit that details MSHA's summary of facts supporting the proposed penalty. Both the operator and, in the case of a penalty contest, the Commission have the opportunity to see how MSHA applied part 100's interpretations and formula to the facts of a particular citation or order. The penalty summary lists the number of penalty points assessed under each statutory penalty criterion and the total resulting penalty amount.

2. The Commission's Approach to Assessing Civil Penalties

Historically, the Secretary (through MSHA), has affirmatively limited the scope, purpose, and applicability of part 100's penalty formula by explicitly stating that the Commission is not expected to consider the formula when assessing civil penalties. *See* 30 CFR 100.1 and 100.2 (limiting scope and applicability of part 100 to MSHA's proposed penalties). In the preamble to the 1982 Final Rule, MSHA stated:

> When a proposed penalty is contested, neither the formula nor any other aspect of these regulations applies. If the proposed penalty is contested, the Mine Safety and Health Review Commission exercises independent review, and applies the six statutory criteria without consideration of these regulations.

Criteria and Procedures for Proposed Assessment of Civil Penalties (May 21, 1982, 47 FR 22286–87)

The stated practice of the Commission, therefore, has been to assess penalties *de novo* according to the six statutory criteria. *See, e.g., Spartan Mining Co.,* 30 FMSHRC 699, 723 (Aug. 2008). The Commission has relied, in part, on the Secretary's regulatory limitations on the reach of part 100 to hold that it possesses *de novo* authority. *See Sellersburg Stone Co.,* 5 FMSHRC 287, 291 (1983), *aff'd Sellersburg Stone Co.* v. *Federal Mine Safety & Health Rev. Comm'n,* 736 F.2d 1147 (7th Cir. 1984).

In contrast to part 100, the Commission's case law does not interpret or define the statutory penalty criteria. To guide the *de novo* exercise of the authority of Commission administrative law judges (ALJs), the Commission has instead established basic procedures for Commission ALJs to follow when assessing civil penalties. The Commission's Procedural Rule 30 instructs Commission ALJs to issue a written opinion that makes findings of fact and conclusions of law with regard to each of the statutory criteria. 29 CFR 2700.30. Commission case law also requires that ALJs provide a ''sufficient explanation of the bases underlying the penalties assessed by the Commission'' for penalties that ''substantially diverge from those originally proposed.'' *Spartan Mining Co.,* 30 FMSHRC at 723 (quoting *Sellersburg,* 5 FMSHRC at 293).

The Commission's adequate explanation requirement is purely procedural; it does not purport to establish any deference toward the Secretary's proposed penalties. Thus, the Commission has unequivocally stated in its rules and decisions that its ALJs are bound by neither the Secretary's penalty regulations nor the Secretary's proposed penalty. 30 CFR 2700.30; *Mize Granite Quarries,* 34 FMSHRC 1760, 1763 (Aug. 7, 2012). The Commission has held that its ALJs need not even give a presumption of validity to the Secretary's proposed assessments. *Mining & Property Specialists,* 33 FMSHRC 2961, 2963 (Dec. 6, 2011). Finally, the Commission has held that an ALJ who sustains all of the Secretary's factual allegations—or even finds greater gravity or negligence than that alleged—is free to assess lower penalties than those proposed by the Secretary, so long as the ALJ provides an adequate explanation for the penalty assessed. *Cantera Green,* 22 FMSHRC 616, 622 (May 2000).

3. Shortcomings of the Existing Approach to Part 100's Scope and Applicability

MSHA is concerned that the existing approach to part 100's scope and applicability—under which MSHA applies part 100's substantive penalty regulations when proposing a penalty, and the Commission assesses penalties *de novo* without reference to MSHA's interpretations or policy choices—has several shortcomings that are detrimental to the effectiveness of the Mine Act's civil penalty scheme.

First, the existing approach fails to provide sufficient predictability and consistency. Under the existing approach, the Secretary can sustain his burden to prove the violation and all penalty-related facts, and the Commission may nonetheless assess a civil penalty that differs from that proposed by the Secretary. Indeed, according to the penalty contest data analyzed by MSHA, the Commission takes varied approaches when the Secretary sustains his burden of proof. In cases decided from 2008 through 2013 in which MSHA proposed a regular formula penalty under the existing penalty regulations, and the Commission affirmed the violation with no modifications, the Commission has assessed the penalty proposed by the Secretary in 60 percent of cases; a lower penalty in 33 percent of cases; and a higher penalty in 7 percent of cases. See Table 5 below.

TABLE 5—FREQUENCY OF PENALTY DIVERGENCE FOR DECISIONS IN WHICH COMMISSION AFFIRMED VIOLATION WITH NO MODIFICATIONS TO CITATION OR ORDER

Decision CY*	Number of citations and orders decided—no modifications	Commission assessed same penalty (Percent)	Commission assessed higher penalty (Percent)	Commission assessed lower penalty (Percent)
2008	14	71	0	29
2009	116	62	9	29
2010	56	38	7	55
2011	507	79	5	16
2012	145	43	21	36
2013	414	44	5	51

TABLE 5—FREQUENCY OF PENALTY DIVERGENCE FOR DECISIONS IN WHICH COMMISSION AFFIRMED VIOLATION WITH NO MODIFICATIONS TO CITATION OR ORDER—Continued

Decision CY*	Number of citations and orders decided—no modifications	Commission assessed same penalty (Percent)	Commission assessed higher penalty (Percent)	Commission assessed lower penalty (Percent)
Totals	1,252	60	7	33

* Decision results recorded in MSHA systems as of 4/1/2014.

The Commission is even more likely to diverge from the penalty indicated by part 100's formula when a judge modifies the citation or order. In such cases, the Commission assessed the penalty that would have been indicated by applying MSHA's penalty regulations to the judge's factual findings in only 22 percent of the cases decided. See Table 6 below.

TABLE 6—FREQUENCY OF PENALTY DIVERGENCE FROM MSHA'S REGULAR PENALTY FORMULA FOR DECISIONS IN WHICH COMMISSION AFFIRMED VIOLATION BUT MODIFIED THE CITATION OR ORDER

Decision CY*	Number of violations affirmed with modification to citation or order	Commission assessed same penalty (Percent)	Commission assessed higher penalty (Percent)	Commission assessed lower penalty (Percent)
2008	3	0	0	100
2009	14	7	50	43
2010	19	47	16	37
2011	101	22	37	42
2012	66	18	32	50
2013	91	24	57	19
Totals	294	22	41	37

* Decision results recorded in MSHA systems as of 4/1/2014.

Such inconsistencies undermine MSHA's efforts to achieve evenhanded and predictable treatment among violators by promulgating a civil penalty policy that gives fair notice of the consequences of infractions.

Second, MSHA is concerned that mine operators hold a perception that a lower penalty can be obtained by bringing a penalty contest before the Commission because the Commission is not required to follow MSHA's penalty regulations. Indeed, since MSHA began proposing civil penalties under the existing rule, in cases where the Commission has affirmed the Secretary's citation or order and found that the Secretary met his burden to prove all penalty-related facts, the Commission has assessed total civil penalties that are $579,345, or 15 percent, less than those MSHA originally proposed:

TABLE 7—COMPARISON OF TOTAL CIVIL PENALTIES PROPOSED BY MSHA AND TOTAL CIVIL PENALTIES ASSESSED BY COMMISSION IN CASES WHERE COMMISSION AFFIRMED CITATION OR ORDER WITH NO MODIFICATIONS TO CITATION OR ORDER

Decision CY*	Number of citations and orders decided with no modifications to citation or order	MSHA's proposed penalties under existing rule	Commission's penalty assessments after adjudication	Percent change in penalties (Percent)
2008	14	$17,879	$16,654	−7
2009	116	142,477	122,803	−14
2010	56	469,084	391,058	−17
2011	507	1,554,639	1,331,850	−14
2012	145	900,311	769,975	−14
2013	414	701,796	574,501	−18
Totals	1,252	3,786,186	3,206,841	−15

* Decision results recorded in MSHA systems as of 4/1/2014.

MSHA is concerned that the perception that a lower penalty can be achieved at the Commission—even when the Secretary sustains his burden of proof—is exacerbating the number of contested cases under the Mine Act by

creating an extra and unnecessary incentive for mine operators to contest MSHA's proposed penalties. An excessive number of penalty contests, in turn, hinder efficient and effective enforcement of the Mine Act.

Third, MSHA is concerned that the integrity of penalty decisions is compromised by the lack of substantive rules to guide the Commission's penalty analysis. Commission ALJs identify and discuss the six statutory penalty criteria before arriving at a penalty, but the Commission's precedent, unlike part 100, provides ALJs with no consistent method to interpret each criterion or to translate that discussion into a penalty amount. Because Congress did not give the Commission the authority to make law or policy, but rather gave the Commission limited authority to issue procedural rules, *see* 30 U.S.C. 823(d)(2), the Commission's lack of substantive guidance to its ALJs on the meaning of the six statutory penalty criteria cannot be remedied through Commission rulemaking or adjudication.

Finally, MSHA is concerned that the existing approach undermines the Secretary's ability to establish a penalty policy that achieves the deterrent purposes of civil penalties under the Mine Act. Under the Mine Act's split-enforcement model, the Secretary has exclusive policymaking authority, and the Commission is ''the equivalent of a court.'' *See, e.g., Jeroski* v. *Sec'y of Labor,* 697 F.3d 651, 653 (7th Cir. 2012). If the Secretary decides that an across-the-board increase or decrease in civil penalties is necessary to achieve the purposes of the Mine Act, the Commission's overall assessments should also reflect that policy choice, so long as the Secretary sustains his burden of proof regarding the facts of each violation and the six penalty criteria.

B. Proposed Alternatives to the Existing Approach to §§ 100.1 and 100.2

MSHA is considering two alternative proposals to bring greater consistency and predictability to the assessment of civil penalties than achieved by the existing approach to §§ 100.1 and 100.2. The third alternative would be to leave these sections unchanged.

1. Modify the Scope and Applicability of Part 100 To Make § 100.3 a Legislative Rule Governing Both the Proposal and the Assessment of Civil Penalties

MSHA's first proposed alternative is to modify the scope and applicability of part 100 so that § 100.3 is a legislative rule that governs both MSHA's proposal and the Commission's assessment of civil penalties. This alternative would require the Commission to apply the penalty formula when assessing civil penalties according to the six statutory criteria.

Under the first alternative, §§ 100.1 and 100.2 would be revised to read as follows:

§ 100.1 Scope and Purpose

This part provides the criteria and procedures for the proposal and assessment of civil penalties under §§ 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining penalties by both MSHA and the Commission, to maximize the incentives for mine operators to prevent and correct hazardous conditions, to encourage the consistent and predictable assessment of civil penalties, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability

The criteria and procedures in this part are applicable to the proposal and assessment of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended.

(a) MSHA shall review each citation and order and shall make proposed assessments of civil penalties.

(b) When MSHA elects to make a regular formula assessment, the Federal Mine Safety and Health Review Commission shall determine whether MSHA has met its burden to establish the facts required to sustain each proposed assessment and shall assess a penalty in accordance with the civil penalty formula established in §§ 100.3 and 100.4 of this part.

Under this alternative, as under the existing rule, MSHA would propose a penalty according to the part 100 formula. If the mine operator contests the penalty, an ALJ would make findings of fact under each of the six penalty criteria.

This alternative would take a different approach than the existing rule to the application of the penalty formula to the facts found by the ALJ. Under this alternative, if the Secretary meets his burden to prove the penalty-related facts alleged, part 100 would require the ALJ to assess MSHA's proposed penalty. If the Secretary does not meet his burden of proof, the judge would apply part 100's penalty formula to the adjudicated facts to arrive at a new assessment.

Under this proposed alternative, the Commission, when reviewing contested penalty assessments, would review the ALJ's factual findings for substantial evidence as it has under the existing rule. The proposed alternative would additionally require the Commission to review whether the ALJ correctly applied part 100 to the penalty-related facts.

2. Modify the Scope and Applicability of Part 100 While Allowing the Commission To Depart From the Formula Penalty

MSHA's second proposed alternative is similar to the first, but would give the Commission flexibility to depart from the part 100 penalty formula in much the same way that district court judges were authorized, in limited circumstances, to depart from the Sentencing Guidelines before the Supreme Court's ruling in *United States* v. *Booker,* 543 U.S. 220 (2005). Under that framework, the district court first calculated the applicable Sentencing Guidelines range, and then considered whether to grant an upward or downward departure. *See, e.g., Koon* v. *United States,* 518 U.S. 81, 88–89 (1996).[1]

The Sentencing Reform Act of 1984 contemplated that district court judges would grant a departure for ''an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.'' 18 U.S.C. 3553(b)(1). To determine whether the Sentencing Commission had adequately considered a circumstance, Congress instructed courts to consider the Sentencing Guidelines, policy statements, and official commentary of the Sentencing Commission. *Id.*

The Commission's Manual elaborated on the concept of departures by explaining that departures were warranted in unusual or atypical cases and described such cases as ''one[s] to which a particular guideline linguistically applies but where conduct significantly differs from the norm.'' *Koon,* 518 U.S. at 93 (quoting 1995 U.S.S.G. ch. 1, pt. A, intro. comment. 4(b)).

Under MSHA's second alternative, part 100 would employ a similar legal standard and allow Commission ALJs to make an upward or downward departure from MSHA's formula when justified. Sections 100.1 and 100.2 would be revised to read as follows:

§ 100.1 Scope and Purpose

This part provides the criteria and procedures for the proposal and assessment of civil penalties under §§ 105 and 110 of the

[1] The pre-*Booker* Sentencing Guidelines are more analogous to this rulemaking than the post-*Booker* Guidelines because the criminal constitutional protections motivating the Supreme Court's decision in *Booker* are inapplicable to the assessment of civil penalties under the Mine Act.

Federal Mine Safety and Health Act of 1977 (Mine Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining penalties by both MSHA and the Commission, to maximize the incentives for mine operators to prevent and correct hazardous conditions, to encourage the consistent and predictable assessment of civil penalties, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability

The criteria and procedures in this part are applicable to the proposal and assessment of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended.

MSHA would also incorporate a new § 100.9 to identify the applicable legal standard for Commission ALJs to apply to the Secretary's proposed regular assessments. The new § 100.9 would read as follows:

§ 100.9 Commission Review of the Secretary's Proposed Regular Assessments

(a) When MSHA elects to make a regular formula assessment, the Federal Mine Safety and Health Review Commission shall determine whether MSHA has met its burden to establish the facts required to sustain each proposed assessment and shall assess a penalty in accordance with the civil penalty formula established in §§ 100.3 and 100.4 of this part.

(b) Notwithstanding § 100.9(a), if the administrative law judge (ALJ) finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Secretary when formulating the penalty regulations, the ALJ may assess a penalty other than that indicated by the formula so long as:

(1) The ALJ considers the penalty regulations in part 100, the relevant regulatory history, and MSHA's policy statements when determining whether the Secretary adequately considered the circumstance.

(2) The ALJ provides a statement of reasons for assessing a civil penalty that is higher or lower than the penalty indicated by applying §§ 100.3 and 100.4 to the penalty-related facts as found by the ALJ.

(3) The ALJ considers the statutory penalty criteria and the purposes of this part identified in § 100.1.

(4) The ALJ assesses a civil penalty that is consistent with statutory minimum and maximum penalties.

Under the second proposed alternative, the Secretary anticipates that the Commission would review the ALJ's findings of penalty-related facts for substantial evidence; the ALJ's application of the civil penalty formula in §§ 100.3 and 100.4 to the penalty-related facts *de novo;* and the ALJ's assessment of a penalty under § 100.9(b) for abuse of discretion. MSHA's second proposed alternative would promote greater consistency and predictability than the existing rule because Commission ALJs would assess the formula penalty indicated by the adjudicated facts in many, if not most, cases. When departing from the formula penalty, Commission ALJs would not disregard the Secretary's penalty regulations, but rather would engage in a reasoned examination of them. Through the process of explaining justified departures from the penalty regulations in a limited number of cases, the Commission and its ALJs could contribute to a dialogue with the Secretary, mine operators, and other interested parties about ways in which the Secretary could continue to refine and improve the regular assessment rules to better serve the purposes of the Mine Act.

3. No Change to Regulatory Language

MSHA's third proposed alternative is to make no change to the existing scope and applicability of part 100. Under this alternative, the Secretary could pursue his penalty objectives through a case-by-case approach in penalty contests before the Commission. In litigation, the Secretary could ask the Commission to establish a presumption of validity in favor of the penalty indicated by part 100 by requiring its ALJs to give an explanation for why the part 100 penalty is inadequate, rather than an explanation for the bases of the Commission's *de novo* assessment according to the six statutory criteria. The Secretary could also request that the Commission provide more guidance to Commission ALJs about what an adequate explanation of a penalty assessment involves. Finally, the Secretary could ask the Commission to defer to the Secretary's interpretations of the penalty factors in part 100, even if the Commission does not weigh and balance those factors as the Secretary does in § 100.3(g)'s penalty conversion table.

C. Request for Comments

MSHA seeks comments addressing which of these three proposed alternatives would best achieve the purposes of the Mine Act's civil penalty scheme. In particular, MSHA seeks comments addressing whether part 100's civil penalty formula should govern the Commission's penalty assessments in addition to MSHA's penalty proposals, or whether MSHA should instead continue to address penalty-related issues on a case-by-case basis through litigation rather than rulemaking. MSHA also seeks comments addressing whether the Commission should be able to depart from the penalty formula and what requirements the Commission should satisfy when departing from the formula.

V. Preliminary Regulatory Economic Analysis

MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below. MSHA requests comments on all estimates of costs and benefits presented in this preamble, and on the data and assumptions the Agency used to develop estimates.

A. Executive Orders (E.O.) 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public safety and health 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.

Under E.O. 12866, a significant regulatory action is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. MSHA has determined that the proposed rule is a significant regulatory action because it raises novel legal and policy issues.

The analysis below indicates that the total transfer of monetary penalties from the mining industry to the Federal government would decrease by approximately $2.7 million from $82.5 million under the existing rule to $79.8 million under the proposed rule. For analysis purposes under E.O. 12866, there are no costs or quantified benefits.

B. Population at Risk

The proposed rule applies to all mines in the United States. MSHA divides the mining industry into two major sectors based on commodity: (1) coal mines and (2) metal and nonmetal (M/NM) mines. The Agency maintains data on the number of mines and on mining employment by mine type and size. MSHA also collects data on employment at independent contractor

firms performing certain types of work at mines and on mining operations owned or operated by state or local governments. As shown in Table 8, MSHA estimates that there were 13,757 mines with employment in 2013, including 149 mines owned or operated by state or local governments. These mines employed 340,000 miners, including contract workers and excluding office workers.

TABLE 8—NUMBER OF MINES, AND EMPLOYMENT, EXCLUDING OFFICE EMPLOYEES, BY EMPLOYMENT SIZE OF MINE, IN 2013

Size of mine (# employees)	# coal mines	# M/NM mines	Total # mines	Non-office employment at coal mines	Non-office employment at M/NM mines	Non-office employment at all mines
1–19	991	10,654	11,645	6,305	48,697	55,002
20–500	688	1,368	2,056	56,727	72,697	129,424
501+	23	33	56	17,041	23,477	40,518
Contractors						114,911
Total	1,702	12,055	13,757	80,073	144,871	339,855

MSHA estimates the value of coal produced in 2013 using coal production, and the most recent price of coal from the U.S. Department of Energy (DOE), Energy Information Administration (EIA), adjusted to 2013 dollars using the GDP price deflator from the Bureau of Economic Analysis. MSHA estimates the 2013 price per ton of underground coal to be $67.56, and the 2013 price per ton of surface coal to be $26.83. The estimated value of coal produced in U.S. coal mines in 2013 was $40.3 billion, of which $23.1 billion was from underground coal and $17.2 billion from surface coal.

The U.S. Department of the Interior (DOI) estimated the value of the U.S. mining industry's M/NM output in 2013 to be approximately $74.2 billion. The value of production estimates are from DOI, U.S. Geological Survey (USGS), Mineral Commodity Summaries 2014, February 2014, page 8.

As shown in Table 9, the combined value of production from all U.S. mines in 2013 was $114.5 billion.

TABLE 9—COAL AND M/NM MINE REVENUE, BY EMPLOYMENT SIZE OF MINE, IN 2013

Size of mine (# employees)	Coal revenue (millions of dollars)	M/NM revenue (millions of dollars)	Total revenue (millions of dollars)
1–19	$603	$16,803	$17,405
20–500	24,921	39,431	64,352
501+	14,771	17,967	32,738
Total	40,295	74,200	114,495

C. Benefits

The proposed changes to part 100 would improve the efficiency of the Agency's enforcement efforts and minimize disputes. When issuing citations or orders, inspectors are required to evaluate safety and health conditions and make decisions about five of the six statutory criteria. The proposed rule would simplify the gravity and negligence criteria and place an increased emphasis on the more serious hazards. Simplifying the criteria would increase objectivity and clarity in the citation and order process. The proposed changes should result in fewer areas of disagreement and earlier resolution of enforcement issues, which should result in fewer contests of violations or proposed assessments.

MSHA conducted a detailed analysis of the 121,089 violations for which MSHA proposed penalties under the regular formula during the 12-month baseline (2013). In reviewing the existing distribution of the factors used to calculate the civil penalties, MSHA determined that there were noticeable differences in the way inspectors evaluated subjective factors such as the likelihood of the cited condition or practice causing an accident, the expected severity of any injury the condition or practice might cause, and the degree of negligence attributed to the mine operator in allowing the condition or practice to occur. For example, negligence attributed to the violator currently accounts for 30 percent of the penalty points assigned to all violations. The data revealed that M/NM mine inspectors assessed ''High Negligence'' in 10 percent of the violations while inspectors in coal mines assessed ''High Negligence'' in five percent of the violations. An even larger difference exists with the inspectors' evaluation of injury severity. M/NM mine inspectors evaluate the potential injury to be ''Fatal'' in 24 percent of the violations cited compared to 11 percent for coal mine inspectors. MSHA's existing Form 7000–3 ''Mine Citation/Order Form'' is both outdated and complex. With 1,000 possible permutations for Gravity and Negligence, the existing form lends itself to subjectivity and ambiguity when evaluating these factors. The proposed citation/order form would reduce the number of permutations to 54, simplifying the criteria to increase objectivity and the form's clarity consistent with changes in the proposed rule. The proposed revisions to the citation/order form would result in fewer areas of disagreement and earlier resolution of enforcement issues.

The proposal is structured to encourage operators to be more proactive in addressing safety and health conditions at their mines. Under the proposal, total monetary civil penalties would remain generally the same as MSHA's proposed penalties under the existing rule. The proposal would place an increased emphasis on negligence and gravity to more appropriately address factors that

directly impact miner safety and health. The proposal would place less emphasis on mine size, with slightly less emphasis on controller and contractor sizes.

Finally, MSHA is proposing to increase the minimum penalties for unwarrantable failure to provide greater deterrent for operators who allow these types of violations to occur.

Although MSHA has identified potential benefits of the proposed rule, the Agency has no basis to quantify or monetize these potential benefits. Further, MSHA's analysis of the projected benefits considered only the effect of the proposal on MSHA's proposed penalties and did not consider the impact of the proposal on final orders of the Commission. MSHA has no basis from which to project how the proposed changes to §§ 100.1 and 100.2 might affect final orders of the Commission.

D. Projected Impacts

For most MSHA rules, the estimated impact associated with a proposed rule reflects the cost to the mining industry of achieving compliance with the rule. For this proposed rule, the projected impacts consist of slightly lower total payments by mine operators for penalties incurred.

In response to the proposed changes to the regular penalty formula, a mine operator could invest in complying with safety and health standards and regulations. When MSHA promulgates a new standard, it generally assumes full industry compliance with the existing standard when estimating compliance costs. Any compliance costs incurred in response to adjustments in the penalty tables, therefore, are not costs attributable to this proposed rule. MSHA is aware that some state and local governments own or operate mines. MSHA does not propose penalties for violations at these mines; therefore, state and local governments are not directly impacted by this proposal.

Any increase in proposed MSHA assessments that may occur would be a transfer of resources between government and private industry. It would not be a cost to society as a whole, although it would be a private cost to mine operators and independent contractors.

MSHA evaluated the impact of the proposed changes using actual violation data. MSHA conducted a detailed analysis of the 121,089 citations and orders for which MSHA proposed assessments under the regular formula between January 1, 2013 and December 31, 2013 (baseline), the most current year of data available at the time of the analysis. A critical aspect of the analysis was the projection of inspector behavior under the proposed revisions. Due to the reduction in the number of categories for some criteria, MSHA combined some of the existing categories. For example, the existing categories of ''No Likelihood'' and ''Unlikely'' were combined in the proposed category of ''Unlikely'' and the existing categories of ''Reasonably Likely'' and ''Highly Likely'' were combined in the proposed category of ''Reasonably Likely.''

Tables 10 and 11 show the actual proposed civil penalties under the existing rule and projected proposed civil penalties under the proposed rule. The projected average proposed penalty decreases from $876 to $815 for penalties assessed at coal mines and increases from $459 to $480 for penalties assessed at M/NM mines. Total penalties for the coal sector would decline approximately $3.9 million and increase approximately $1.2 million for the M/NM sectors. The estimated penalty decrease of $2.7 million for all mines relative to aggregate penalty levels is 3 percent.

Table 12 shows the number and dollar amounts of all regular formula proposed civil penalties for mine operators and independent contractors for the 12-month baseline period. Of the $82.5 million actual proposed penalties, 69 percent were for the coal mine sector and 31 percent were for the M/NM mine sector. Of the $79.8 million projected proposed penalties, 66 percent were for the coal mine sector and 34 percent were for the M/NM mine sector. Penalties assessed on independent contractors account for five percent ($4.5 million) of the $82.5 million actual proposed penalties and six percent ($4.6 million) of the $79.8 million projected proposed penalties.

TABLE 10—ACTUAL PROPOSED CIVIL PENALTIES UNDER THE EXISTING REGULATION, COAL AND METAL/NONMETAL, 2013

Penalty range	Coal			Metal/Nonmetal		
	Violations assessed	Penalty	Percent of violations	Violations assessed	Penalty	Percent of violations
Minimum	18,478	$2,069,536	28	32,052	$3,589,824	56
<$500	25,495	6,243,120	42	15,452	3,715,074	30
$500 to $1,000	9,070	6,467,964	12	4,002	2,855,905	6
$1,001 to $5,000	9,887	20,770,995	15	4,228	8,782,850	7
$5,001 to $10,000	1,194	8,344,876	2	430	3,044,725	1
$10,001 to $69,999	590	11,517,886	1	192	3,784,885	<1
Maximum	18	1,260,000	<1	1	70,000	<1
Total	64,732	56,674,377		56,357	25,843,263	
Average		876			459	

TABLE 11—PROJECTED PROPOSED CIVIL PENALTIES UNDER THE PROPOSED REGULATION, COAL AND METAL/NONMETAL, 2013

Penalty range	Coal			Metal/Nonmetal		
	Violations assessed	Penalty	Percent of violations	Violations assessed	Penalty	Percent of violations
Minimum	22,898	$2,564,576	35	34,571	$3,871,952	61
<$500	23,857	5,754,830	37	14,751	3,877,979	26
$500 to $1,000	6,898	4,793,200	11	2,944	1,951,900	5
$1,001 to $5,000	9,347	22,187,200	14	3,340	8,009,300	6
$5,001 to $10,000	1,455	10,445,000	2	541	3,951,000	1

TABLE 11—PROJECTED PROPOSED CIVIL PENALTIES UNDER THE PROPOSED REGULATION, COAL AND METAL/NONMETAL, 2013—Continued

Penalty range	Coal			Metal/Nonmetal		
	Violations assessed	Penalty	Percent of violations	Violations assessed	Penalty	Percent of violations
$10,001 to $69,999	274	6,820,000	<1	209	5,300,000	<1
Maximum	3	210,000	<1	1	70,000	<1
Total	64,732	52,774,806		56,357	27,032,131	
Average		815			480	

TABLE 12—ACTUAL AND PROJECTED PROPOSED CIVIL PENALTIES UNDER THE EXISTING AND PROPOSED REGULATIONS, ALL MINES

Penalty range	Total actual civil penalties proposed (2013)			Total projected civil penalties proposed based on 2013 violations		
	Violations assessed	Penalty proposed	Percent of violations	Violations assessed	Projected penalty	Percent of violations
Minimum	50,530	$5,659,360	42	57,469	$6,436,528	47
<$500	40,947	9,958,194	34	38,608	9,632,809	32
$500 to $1,000	13,072	9,323,869	11	9,842	6,745,100	8
$1,001 to $5,000	14,115	29,553,845	12	12,687	30,196,500	10
$5,001 to $10,000	1,624	11,389,601	1	1,996	14,396,000	2
$10,001 to $69,999	782	15,302,771	1	483	12,120,000	<1
Maximum	19	1,330,000	<1	4	280,000	<1
Total	121,089	82,517,640		121,089	79,806,937	
Average		681			659	

VI. Feasibility

MSHA has concluded that the proposed revisions to part 100 civil penalties are technologically and economically feasible. Because the proposed rule is not technology-forcing, MSHA concludes that the rule is technologically feasible. MSHA has traditionally used a revenue screening test—whether the yearly impacts of a regulation are less than one percent of revenues—to establish presumptively that the regulation is economically feasible for the mining community. Because the proposed rule is projected to decrease the proposed penalty amounts by approximately $2.7 million on an industry with estimated annual revenues of $114.5 billion, MSHA concludes that the proposed rule would be economically feasible for the mining industry.

VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the compliance cost impact of the proposed rule on small entities. Based on that analysis, MSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities in terms of compliance costs. Therefore, the Agency is not required to develop an initial regulatory flexibility analysis.

The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition, and is required to use SBA's definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of the proposed rule on mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the Agency's rules on them will also tend to be different.

This analysis complies with the requirements of the RFA for an analysis of the impact on small entities while continuing MSHA's traditional definition of ''small mines.''

B. Factual Basis for Certification

MSHA initially evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether further analysis is required.

Under the existing rule, proposed assessments on mines with 1 to 500 employees amount to 85 percent of total proposed assessments. Under the proposal, MSHA projects that total penalties would remain basically the

same as under the existing rule. As shown in Table 13 of this preamble, MSHA projects that proposed penalties at mines with 1 to 500 employees would decrease under the proposed rule by $1.6 million. Proposed penalties at mines with 1 to 19 employees are projected to decrease by $0.2 million.

TABLE 13—PROJECTED CHANGE IN PROPOSED PENALTIES UNDER THE PROPOSED RULE, AND THE PERCENT OF TOTAL PROJECTED PENALTY AMOUNT

Size of mine (# employees)	Projected impact ($ million)	Percent of total projected penalty amount	2013 Revenue ($ million)	Projected impact as a percentage of revenue
M/NM Mines				
1 to 19	−$1.8	26	$16,803	N/A
1 to 500	0.7	81	$56,233	<0.1
Coal Mines				
1 to 19	1.6	11	603	<1
1 to 500	−2.3	88	25,524	N/A
All Mines				
1 to 19	−0.2	16	17,405	N/A
1 to 500	−1.6	86	81,757	N/A

N/A—Not Applicable.

MSHA projects that proposed penalties at M/NM mines with 1 to 500 employees would increase by $0.7 million under this proposed rule, which rounds to zero percent of 2013 annual revenue. Proposed penalties at M/NM mines with 1 to 19 employees are projected to decrease by $1.8 million. This is due in part to proposed § 100.3(c)(1), which would assign zero violation history points when a mine has 10 or fewer inspection days over the preceding 15-month period.

MSHA projects that proposed penalties at coal mines with 1 to 500 employees would decrease by $2.3 million under this proposed rule. Projected proposed penalties at coal mines with 1 to 19 employees represent 11 percent of total projected penalties for coal mines. The projected impact on the 991 small coal mines with 1 to 19 employees would increase proposed penalties by $1.6 million or about $1,600 per mine. This represents <1 percent (about 0.27 percent) of 2013 annual revenue for these small coal mines.

MSHA historically identifies mine size based on employment at the mine. Some mines with fewer than 19 employees are controlled by much larger entities. MSHA estimates that 252 or 24 percent of the small mines where MSHA proposed civil penalties for citations/orders in 2013 were controlled by entities with more than 500 employees. The 252 small coal mines would see an increase of $808,000 in penalties under the proposed rule, or 41 percent of the $1.6 million penalties assessed on all small coal mines.

MSHA issued 8,752 citations/orders to independent contractors in 2013. MSHA estimates that independent contractors would see an increase in penalties from $4.5 million to $4.6 million as a result of the proposed rule.

Accordingly, MSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains no additional information collections subject to review by OMB under the Paperwork Reduction Act. MSHA Form 7000–3 is solely used by MSHA's personnel as part of the Agency's enforcement activities. Any burden associated with the form is not subject to the Paperwork Reduction Act.

IX. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule would not include any federal mandate that may result in increased expenditures by state, local, or tribal governments; nor would it increase private sector expenditures by more than $100 million, adjusted for inflation, in any one year or significantly or uniquely affect small governmental jurisdictions. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further Agency action or analysis.

MSHA is aware that some state and local governments own or operate mines. MSHA does not propose penalties for violations at these mines; therefore, state and local governments are not directly impacted by this proposal.

B. Executive Order 13132: Federalism

This proposed rule would not have ''federalism implications'' because it would 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.'' Accordingly, under E.O. 13132, no further Agency action or analysis is required.

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

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this proposed rule would have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This proposed rule impacts only the mining industry. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule would not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this proposed rule would meet the applicable standards provided in § 3 of E.O. 12988, Civil Justice Reform.

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

This proposed rule would have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have ''tribal implications'' because it would not ''have substantial direct effects 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.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action (i.e., it adversely affects energy supply, distribution, or use). MSHA has reviewed this proposed rule for its energy effects because the proposed rule applies to the coal mining sector. Because this proposed rule would result in a reduction in expenditures by the coal mining industry, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: July 25, 2014.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble and under the authority of the Federal Mine Safety and Health Act of 1977, as amended, MSHA is proposing to amend chapter I of title 30, part 100 of the Code of Federal Regulations as follows:

PART 100—CRITERIA AND PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

■ 2. Revise the heading for part 100 to read as set forth above.

■ 3. In § 100.3, revise paragraphs (b), (c), (d), (e), (g), and (h) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(b) *The appropriateness of the penalty to the size of the business of the operator charged.* The appropriateness of the penalty to the size of the mine operator's business is calculated by using both the size of the mine cited and the size of the mine's controlling entity. The size of coal mines and their controlling entities is measured by coal production. The size of metal and nonmetal mines and their controlling entities is measured by hours worked. The size of independent contractors is measured by the total hours worked at all mines. Penalty points for size are assigned based on Tables I through V of this section. As used in these tables, the term ''annual tonnage'' means tons of coal produced by the mine in the previous calendar year and ''annual hours worked'' means total hours worked by all employees at the mine in the previous calendar year. In cases where a full year of data is not available, the coal produced or hours worked is prorated to an annual basis. This criterion accounts for a maximum of 8 penalty points.

TABLE I—SIZE OF COAL MINE

Annual tonnage of mine	Penalty points
<50,000	1
>50,000 to 500,000	2
>500,000 to 1,000,000	3
>1,000,000	4

TABLE II—SIZE OF CONTROLLING ENTITY—COAL MINE

Annual tonnage	Penalty points
<200,000	1
>200,000 to 700,000	2
>700,000 to 3,000,000	3
>3,000,000	4

TABLE III—SIZE OF METAL/NONMETAL MINE

Annual hours worked at mine	Penalty points
<5,000	0
>5,000 to 200,000	1
>200,000 to 1,500,000	2
>1,500,000 to 3,000,000	3
>3,000,000	4

TABLE IV—SIZE OF CONTROLLING ENTITY—METAL/NONMETAL MINE

Annual hours worked	Penalty points
<50,000	0
>50,000 to 300,000	1
>300,000 to 2,000,000	2
>2,000,000 to 5,000,000	3
>5,000,000	4

TABLE V—SIZE OF INDEPENDENT CONTRACTOR

Annual hours worked at all mines	Penalty points
<5,000	0
>5,000 to 10,000	1
>10,000 to 30,000	2
>30,000 to 70,000	3
>70,000 to 200,000	4
>200,000 to 500,000	5
>500,000 to 700,000	6
>700,000 to 1,000,000	7
>1,000,000	8

(c) *History of previous violations.* An operator's history of previous violations is based on both the total number of violations and the number of repeat

violations of the same citable provision of a standard in the 15-month period preceding the occurrence date of the violation being assessed. Only assessed violations that have become final orders of the Federal Mine Safety and Health Review Commission will be included in determining an operator's violation history.

(1) *Total number of violations.* For mine operators, penalty points are assigned for violations per inspection day based on Table VI of this section. Penalty points are not assigned for mines with fewer than 10 violations or 10 or fewer inspection days in the specified history period. For independent contractors, penalty points are assigned for the total number of violations at all mines based on Table VII of this section. Penalty points are not assigned for independent contractors with fewer than six violations in the specified history period. This aspect of the history criterion accounts for a maximum of 16 penalty points.

TABLE VI—HISTORY OF PREVIOUS VIOLATIONS—MINE OPERATORS

Overall history: Violations per inspection day	Penalty points
<0.3	0
>0.3 to 0.5	2
>0.5 to 0.7	5
>0.7 to 0.9	8
>0.9 to 1.1	10
>1.1 to 1.3	11
>1.3 to 1.5	12
>1.5 to 1.7	13
>1.7 to 1.9	14
>1.9 to 2.1	15
>2.1	16

TABLE VII—HISTORY OF PREVIOUS VIOLATIONS—INDEPENDENT CONTRACTORS

Overall history: Total violations at all mines	Penalty points
0 to 5	0
6 to 7	1
8 to 9	2
10 to 11	3
12 to 13	4
14 to 15	5
16 to 17	6
18 to 19	7
20 to 21	8
22 to 23	9
24	10
25	11
26	12
27	13
28	14
29	15
>29	16

(2) *Repeat violations of the same standard.* This section applies only after an operator has a minimum of 10 violations and more than 10 inspection days or an independent contractor has a minimum of six violations in the specified history period. Repeat violation history is based on the number of violations of the same citable provision of a standard. For coal and metal and nonmetal mine operators with a minimum of six repeat violations, penalty points are assigned for the number of repeat violations per inspection day (RPID) based on Table VIII of this section. For independent contractors, penalty points are assigned for the number of repeat violations at all mines based on Table IX of this section. This aspect of the history criterion accounts for a maximum of 10 penalty points.

TABLE VIII—HISTORY OF PREVIOUS VIOLATIONS—REPEAT VIOLATIONS FOR COAL AND METAL/NONMETAL OPERATORS WITH A MINIMUM OF SIX REPEAT VIOLATIONS

Number of repeat violations per inspection day	Penalty points
<0.01	0
>0.01 to 0.02	1
>0.02 to 0.03	2
>0.03 to 0.05	3
>0.05 to 0.08	4
>0.08 to 0.12	5
>0.12 to 0.16	6
>0.16 to 0.20	7
>0.2 to 0.3	8
>0.3 to 0.5	9
>0.5	10

TABLE IX—HISTORY OF PREVIOUS VIOLATIONS—REPEAT VIOLATIONS FOR INDEPENDENT CONTRACTORS

Number of repeat violations at all mines	Penalty points
<6	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
>14	10

(d) *Negligence.* Negligence is conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm. Under the Mine Act, a mine operator is required to be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices. The failure of a mine operator to exercise a high standard of care constitutes negligence. The negligence criterion assigns penalty points for the degree to which the operator failed to exercise a high standard of care based on conduct evaluated according to Table X of this section. This criterion accounts for a maximum of 30 penalty points.

TABLE X—NEGLIGENCE

Standard of care	Penalty points
Not Negligent: (The operator exercised diligence and could not have known of the violative condition or practice.)	0
Negligent: (The operator knew or should have known of the violative condition or practice.)	15
Reckless Disregard: (The operator displayed conduct which exhibits the absence of the slightest degree of care.)	30

(e) *Gravity.* Gravity is an evaluation of the seriousness of the violation. Gravity is determined by the likelihood of the occurrence of the event against which a standard is directed; the severity of the illness or injury if the event has occurred or were to occur; and whether or not persons are potentially affected if the event has occurred or were to occur. The gravity criterion assigns penalty points based on Tables XI through XIII of this section. This criterion accounts for a maximum of 36 penalty points.

TABLE XI—GRAVITY: LIKELIHOOD

Likelihood of occurrence	Penalty points
Unlikely: (Condition or practice cited has little or no likelihood of causing an event that could result in an injury or illness.)	0
Reasonably Likely: (Condition or practice cited is likely to cause an event that could result in an injury or illness.)	14
Occurred: (Condition or practice cited has caused an event that has resulted or could have resulted in an injury or illness.)	25

TABLE XII—GRAVITY: SEVERITY

Severity of injury or illness if the event has occurred or were to occur	Penalty points
No lost work days: (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.)	0

TABLE XII—GRAVITY: SEVERITY—Continued

Severity of injury or illness if the event has occurred or were to occur	Penalty points
Lost workdays or restricted duty: (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	5
Fatal: (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	10

TABLE XIII—GRAVITY: PERSONS POTENTIALLY AFFECTED

Persons potentially affected if the event has occurred or were to occur	Penalty points
No: (No persons are affected by the condition or practice cited.)	0
Yes: (One or more persons are affected by the condition or practice cited.)	1

* * * * *

(g) *Penalty conversion table.* The penalty conversion table is used to convert the sum of penalty points assigned for a violation (in paragraphs (b) through (f) of this section) to a civil penalty amount in dollars ($).

TABLE XIV—PENALTY CONVERSION TABLE

Points	Penalty ($)
31 or fewer	112
32	118
33	124
34	150
35	175
36	200
37	250
38	300
39	350
40	400
41	450
42	500
43	600
44	700
45	800
46	1,000
47	1,200
48	1,400
49	1,600
50	1,800
51	2,000
52	2,500
53	3,000
54	3,500
55	4,000
56	5,000
57	6,000
58	7,000
59	8,000
60	9,000
61	10,000
62	15,000
63	20,000
64	25,000
65	30,000
66	35,000
67	40,000
68	45,000
69	50,000
70	55,000
71	60,000

TABLE XIV—PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
72	65,000
73 or more	70,000

(h) *The effect of the penalty on the operator's ability to continue in business.* MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit financial information to MSHA's Office of Assessments, Accountability, Special Enforcement and Investigations at 1100 Wilson Boulevard, 25th Floor, Arlington, Virginia 22209, concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

■ 4. In § 100.4, revise paragraphs (a) and (b) to read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

(a) The minimum penalty for any citation or order issued under § 104(d)(1) of the Mine Act shall be $3,000.

(b) The minimum penalty for any order issued under § 104(d)(2) of the Mine Act shall be $6,000.

* * * * *

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating To Include Additional Specificity Within Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72676; File No. SR–EDGX–2014–18]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating To Include Additional Specificity Within Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions

July 25, 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 July 16, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1.5 and Chapter XI of its rule book to include additional specificity regarding the current functionality of the Exchange's System,[3] including the operation of its order types and order instructions. These changes are designed to update the rule book to reflect current system functionality and include: (i) Further clarifying the Exchange's trading sessions and hours of operation by amending Rule 11.1; (ii) describing the process for initial opening and re-opening after a trading halt by adding proposed Rule 11.7, Opening Process; (iii) amending the description of order types, order instructions, and their functionality by deleting the content of Rule 11.5, Order Types and Modifiers, renumbering it as Rule 11.8, and adding proposed Rule 11.6, Definitions; (iv) amending Rule 11.8, Priority of Orders, to provide additional specificity regarding the execution priority of orders and renumbering it as Rule 11.9; and (v) making a series of organizational and conforming changes to Rule 1.5, Rule 8.15, and Chapter XI, as well as moving text from Footnote 4 of the Exchange's Fee Schedule into proposed Rule 11.21.

The text of the proposed changes to Exchange Rule 1.5, 8.15 and Chapter XI are attached as Exhibit 5A. The proposed change to the Fee Schedule is attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1.5 and Chapter XI of its rule book to include additional specificity regarding the current functionality of the Exchange's System, including the operation of its order types and order instructions. These changes are designed to update the rule book to reflect current system functionality and include: (i) Further clarifying the Exchange's trading sessions and hours of operation by amending Rule 11.1; (ii) describing the process for initial opening and re-opening after a trading halt by adding proposed Rule 11.7, Opening Process; (iii) amending the description of order types, order instructions, and their functionality by deleting the content of Rule 11.5, Order Types and Modifiers, renumbering it as Rule 11.8, and adding proposed Rule 11.6, Definitions; (iv) amending Rule 11.8, Priority of Orders, to provide additional specificity regarding the execution priority of orders and renumbering it as Rule 11.9; and (v) making a series of organizational and conforming changes to Rule 1.5, Rule 8.15, and Chapter XI, as well as moving text from Footnote 4 of the Exchange's Fee Schedule into proposed Rule 11.21. Unless otherwise stated,[4] the Exchange does not propose to substantively modify the operation of any of the current defined order types or terms or the operation of the System; rather, it intends to provide additional specificity and transparency to Members, Users, and the investing public regarding the Exchange's order types and system functionality, and to organize its rules in a more intuitive and less complex manner.[5]

Trading Sessions, Hours of Operation, and Initial Opening and Re-Opening Processes

The Exchange proposes to further clarify its trading sessions and hours of operation by amending Rule 11.1. The Exchange also proposes to describe the processes for initial opening and re-opening after a trading halt by adding proposed Rule 11.7, Opening Process. The Exchange believes that these proposed rule changes provide greater transparency to its Members,[6] Users,[7] and the investing public regarding the Exchange's hours of operation and current opening process.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[4] As discussed in more detail below, the Exchange proposes the following new System functionality: Proposed Rule 11.7(c). Alternatively set the price of the Opening Process for securities listed on either the New York Stock Exchange, Inc. or NYSE MKT LLC at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. Proposed Rule 11.7(e). Alternatively set the price of a re-opening at the midpoint of the then prevailing NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported within one second of publication of the first two-sided quotation by the listing exchange. Proposed Rule 11.6(j)(1). Require that an order with a Market Peg instruction that is to be displayed by the System on the EDGX Book include an offset equal to or greater than one Minimum Price Variation. Proposed Rule 11.6(n)(4). Permit an order with a Post Only Instruction to execute against an order resting on the EDGX Book where it is eligible to receive price improvement as described under the proposed rule.

[5] *See* Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014), *available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U7rxbLE4KSo.*

[6] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[7] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

Rule 11.1, Hours of Trading and Trading Days

The Exchange proposes to amend Rule 11.1, Hours of Trading and Trading Days, to clarify when orders may be entered into the System and to outline a User's ability to select the trading sessions for which an order may be eligible for execution. Proposed Rule 11.1(a)(1), Session Indicator, describes each of the Exchange's existing trading sessions. A User may select the particular trading sessions for which their order(s) may be eligible for execution. Specifically, orders designated as:

- ''Pre-Opening Session'' are eligible for execution between 8:00 a.m. Eastern Time and 4:00 p.m. Eastern Time;
- ''Regular Session'' are eligible for execution between the completion of the Opening Process or a Contingent Open as defined in proposed Rule 11.7 (described below), whichever occurs first, and 4:00 p.m. Eastern Time, unless otherwise noted; [8]
- ''Post-Closing Session'' are eligible for execution between the start of the Regular Session and 8:00 p.m. Eastern Time; and
- ''All Sessions'' are eligible for execution between 8:00 a.m. and 8:00 p.m. Eastern Time.

Under proposed Rule 11.1(a)(1), orders may be entered into the System from 6:00 a.m. until 8:00 p.m. Eastern Time, but orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the session selected by the User. All orders are eligible for execution during the Regular Session. For an order to be eligible for the Pre-Opening and/or Post-Closing Sessions, Users must so designate the order. If the User does not select a particular session or sessions, the order will default to the Regular Session only.

Proposed Rule 11.7, Opening Process

The Exchange also proposes to adopt proposed Rule 11.7 to further describe its opening and re-opening processes.[9] Proposed Rule 11.7(a) states that prior to the beginning of the Regular Session, Users who wish to participate in the Opening Process may enter orders to buy or sell. Orders cancelled prior to the Opening Process will not participate in the Opening Process. Proposed Rule 11.7(a)(2) provides that all orders may participate in the Opening Process except for: (i) Orders with a Stop Price [10] or Stop Limit Price [11] instruction, (ii) Limit Orders with a Post Only [12] instruction, (iii) orders with a time-in-force (''TIF'') instruction of Fill-or-Kill (''FOK'') or Immediate or Cancel (''IOC''), and (iv) Intermarket Sweep Orders (''ISOs''). Orders that are designated for the Regular Session that cannot participate in the Opening Process will not be accepted by the System until the Opening Process is completed or a Contingent Opening has occurred as described below. Limit Orders with a Reserve Quantity [13] may participate to the full extent of their displayed size and Reserve Quantity. Limit Orders with a Discretionary Range [14] may participate up to their discretionary price for buy orders and down to their discretionary price for sell orders. A Limit Order with a Pegged instruction [15] will be eligible for execution in the Opening Process based on its pegged price at the time the Opening Process is conducted.

Under proposed Rule 11.7(a)(3), the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer (''NBBO''). Proposed Rule 11.7(c) codifies the process by which the System sets the opening price of the Opening Process. The System sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. (''NYSE'') or NYSE MKT LLC (''NYSE MKT''), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. In addition to this existing process, the Exchange proposes to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Proposed Rule 11.7(b) describes the Opening Process. Under the Opening Process, all orders executable at the midpoint of the NBBO will be processed in time sequence, beginning with the order with the oldest time stamp and not in accordance with proposed Rule 11.9(a)(2)(B), which outlines priority at the midpoint of the NBBO and is described in more detail below. Matches will occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the EDGX Book,[16] cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to proposed renumbered Rule 11.11.

Proposed Rule 11.7(d) describes the Exchange's process for a Contingent Open, which would occur where the conditions to establish the price of the Opening Process set forth under proposed Rule 11.7(c) do not occur by 9:45:00 a.m. Eastern Time. For example, the Opening Process will not occur where, if between 9:30:00 a.m. and 9:45:00 a.m. Eastern Time, no NBBO is published, or, for securities listed on either the NYSE or NYSE MKT, no first trade is reported or quote is published by the listing exchange, as proposed above. If the conditions to establish the price of the Opening Process do not occur by 9:45:00 a.m. Eastern Time, orders will be placed by the System on the EDGX Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to proposed renumbered Rule 11.11. Notwithstanding the occurrence of a Contingent Open, MidPoint Match Orders will not be placed by the System on the EDGX Book because they are not eligible to trade until the conditions set forth under Rule 11.7(c) for determining

[8] Beginning at 9:30:00 a.m. Eastern Time, the System will accept: (i) Incoming orders designated as Intermarket Sweep Orders, and (ii) orders with a time-in-force instruction of Immediate-or-Cancel. This is to assist Members' compliance with Rule 611 of Regulation NMS.

[9] Proposed Rule 11.7 is based on and substantially similar to International Securities Exchange, LLC (''ISE'') Rule 2106. *See also* Securities Exchange Act Release No. 54287 (August 8, 2006), 71 FR 46947 (August 15, 2006) (Order Approving File No. SR–ISE–2006–48).

[10] The Stop Price instruction is proposed to be set forth in Rule 11.8(a)(1), and is further discussed below.

[11] The Stop Limit Price instruction is proposed to be set forth in Rule 11.8(b)(1), and is further discussed below.

[12] The Post Only instruction is proposed to be set forth in Rule 11.6(n)(4), and is further discussed below.

[13] Reserve Quantity is proposed to be defined in Rule 11.6(m), and is further discussed below.

[14] The Discretionary Range instruction is proposed to be defined in Rule 11.6(d), and is further discussed below.

[15] The Pegged instruction is proposed to be defined in Rule 11.6(i), and is further discussed below.

[16] The term ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* EDGX Rule 1.5(d).

the price of the Opening Process have been met.

Proposed Rule 11.7(e) describes the process by which the System sets the price of a re-opening following the resumption of trading after a halt, suspension, or pause. The System currently re-opens a security at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause. In addition, the Exchange proposes to alternatively set the price of a re-opening at the midpoint of the then prevailing NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported within one second of publication of the first two-sided quotation by the listing exchange.

Order Type and System Functionality Clarification Under Chapter XI

The Exchange proposes to describe the basic requirements for all order types processed by the System by eliminating current Rule 11.5 and replacing it with proposed Rule 11.6, Definitions, and Rule 11.8, Order Types, each of which are explained in more detail below. The Exchange also proposes to amend current Rule 11.8, Priority of Orders, to describe the time priority of orders at specific price points and renumber it as Rule 11.9. Unless otherwise stated, the Exchange does not propose to substantively modify the operation of any of the current defined order types or terms or the operation of the System. The Exchange believes the proposed amendments will provide greater transparency regarding how the System operates, the order types the Exchange offers, which instructions a User may attach to each order type, and how order types and instructions when used in combination, may affect an order's execution priority under proposed renumbered Rule 11.9.

Specifically, the Exchange proposes to delete the content of current Rule 11.5, Orders and Modifiers, and replace it with proposed Rule 11.6, Definitions, and Rule 11.8, Order Types. The Exchange's proposed rule change would outline the number of order types available on the System as well as describe what instructions may be attached to each order type. In certain cases, what was previously described under the Exchange's rules as a standalone order type, is, in fact, an instruction or set of instructions attached to an order type and not an order type itself. The Exchange believes the order types that it now proposes to classify as order instructions are derivative of and could not operate independently from what the Exchange proposed as a standalone order type. Specifically, and as described more fully below, proposed Rule 11.8, Order Types, would describe the following standalone order types that are available on the Exchange: Market Orders, Limit Orders, ISOs, MidPoint Match Orders, NBBO Offset Peg Orders, and Route Peg Orders. Proposed Rule 11.8 would further describe each order type's functionality and the instructions a User may attach to each. Proposed Rule 11.6, Definitions, would re-classify and describe the features currently defined as order types as instructions that may be attached to order types.

Proposed Rule 11.6, Definitions

Proposed Rule 11.6 seeks to set forth in one rule current defined terms and order instructions that are described in Chapter XI. The proposed rule also includes additional defined terms and instructions to aid in describing System functionality and the operation of the Exchange's order types. Some features listed below and now codified in proposed Exchange Rule 11.6 are currently included under current Rule 11.5, where they are described as standalone order types. As part of the Exchange's order type clarification discussed below, the Exchange proposes to relocate and reclassify these features as instructions that may be appended to an order type.

The Exchange notes that an instruction defined within Rule 11.6 may not be available for all order types. Whether an instruction is available for a particular order type is set forth in detail in proposed Rule 11.8, Order Types.

The terms and instructions defined within proposed Rule 11.6 are as follows:

Attributable and Non-Attributable (Rule 11.6(a))

The Exchange currently defines the terms ''Attributable Order'' and ''Non-Attributable Order'' in Exchange Rules 11.5(c)(18) and (19). An Attributable Order is currently defined as ''[a]n order designated for display (price and size) that includes the Member's market participant identifier (''MPID'').'' A Non-Attributable Order is currently defined as ''[a]n order designated for display (price and size) on an anonymous basis by the System.'' The Exchange believes that a User choosing whether to display its MPID on an order they submit to the Exchange is more characteristic of an instruction, rather than an order type. Therefore, the Exchange proposes to keep this definition but delete the word Order from both terms, leaving just the terms Attributable and Non-Attributable. As part of its order type clarification, the Exchange proposes to relocate each term to proposed Rule 11.6. The Exchange does not propose to alter the meaning of either term. The Exchange, however, proposes to add additional specificity to the rule regarding the designation of orders as Attributable and Non-Attributable. Specifically, the Exchange proposes to state that unless the User elects otherwise, all orders will be automatically defaulted by the System to Non-Attributable. Further, a User may elect an order to be Attributable on an order-by-order basis or instruct the Exchange to default all its orders as Attributable on a port-by-port basis. However, if a User instructs the Exchange to default all its orders as Attributable on a particular port, such User would not be able to designate any order from that port as Non-Attributable. Where a User includes an Attributable instruction with an order, the User's MPID will be visible via the Exchange's Book Feed.[17] Conversely, if an order is to be Non-Attributable, the User's MPID will not be visible via the Exchange's Book Feed.

Cancel Back (Rule 11.6(b))

Under current Exchange Rule 11.5(c)(4), a User may opt not to use any re-pricing [18] instructions if display of the User's order by the System on the EDGX Book at its limit price would violate Regulation NMS, Regulation SHO, or the National Market System Plan, also known as Limit Up/Limit Down (''LULD''), to address extraordinary market volatility (the ''LULD Plan'')[19] at the time of receipt by the System. In such a case, the System cancels the order back to the User. The Exchange proposes to add a new defined term ''Cancel Back'' to its rules to specifically describe this instruction. The Exchange proposes to define Cancel Back as an instruction the User may attach to an order instructing the System to cancel the order, when, if displayed by the System on the EDGX Book at the time of entry, or upon return to the System after being routed away, the order would create a violation of Rule 610(d) of Regulation NMS, Rule 201 of Regulation SHO, or the order cannot

[17] The Exchange's Book Feed is described under Rule 13.8.

[18] The re-pricing instructions are proposed to be defined in Rule 11.6(l), and are further discussed below.

[19] *See* Appendix A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

otherwise be executed or posted by the System to the EDGX Book at its limit price upon entry. The Cancel Back instruction is not currently defined in the rules, but is currently available in the System. This proposed addition merely codifies the existing ability of a User to request that an order be cancelled if it would violate Regulation NMS, Regulation SHO, or the LULD Plan if it was displayed by the System on the EDGX Book at its limit price, upon entry.

Discretionary Range (Rule 11.6(d))

The Exchange currently defines a ''Discretionary Order'' in Rule 11.5(c)(13) as an ''[o]rder to buy or sell a stated amount of a security at a specified, undisplayed price (the ''discretionary price''), as well as at a specified, displayed price.'' [20] The Exchange believes that a Member adding a non-displayed discretionary price to its order is characteristic of an instruction, rather than an order type. Therefore, the Exchange proposes to delete the word Order from the defined term, and rename the term ''Discretionary Range.'' In addition, the Exchange proposes to modify the definition of Discretionary Range to clarify the order types that may include a Discretionary Range instruction, and how the Discretionary Range of the order operates. Specifically, the Exchange proposes to define Discretionary Range as an instruction that may accompany an order to buy (sell) a stated amount of a security at a specified, displayed price with discretion to execute up (down) to a specified, non-displayed price.[21]

The Exchange also proposes to state that the Discretionary Range of an order to buy (sell) cannot be more than $0.99 higher (lower) than the order's displayed price and that an order with a Discretionary Range instruction resting on the EDGX Book will execute at its least aggressive price when matched for execution against an incoming order that also contains a Discretionary Range instruction, as permitted by the terms of both the incoming and resting order. The Exchange does not propose to add additional functionality to the operation of the Discretionary Range instruction or to alter the meaning of the term or the manner in which an order with a Discretionary Range instruction currently operates in the System. Finally, as part of its order type clarification, the Exchange proposes to relocate the term to proposed Rule 11.6(d).

Display Options (Rule 11.6(e))

An order may either be displayed or non-displayed on the EDGX Book. Accordingly, the Exchange proposes to include definitions of ''Displayed'' and ''Non-Displayed.'' Although the words display and displayed are used in various Exchange rules,[22] these terms are not currently defined in the Exchange's rules. Therefore, the Exchange proposes to define Displayed in Rule 11.6(e) as ''an instruction the User may attach to an order stating that the order is to be displayed by the System on the EDGX Book.'' The addition of the definition is not intended to change the substance of how that term is used in the Exchange's existing rules. The Exchange is also proposing that the Displayed instruction is the default instruction for all orders eligible for display by the System on the EDGX Book.

Second, the Exchange proposes amend the definition of a Non-Displayed Order. Current Exchange Rule 11.5(c)(8) defines a Non-Displayed Order as:

> [a] market or limit order that is not displayed on the Exchange. A Non-Displayed Order is ranked based on the specified limit price and time of order entry in accordance with Rule 11.8(a)(2) and is available for potential execution against incoming marketable orders in accordance with Rule 11.9(a)(4)(A)–(B). The System shall not accept a Non-Displayed Order that is priced better than midpoint of the NBBO.

The Exchange believes that a Member adding a Non-Displayed instruction to its order is characteristic of an instruction, rather than a standalone order type. Therefore, the Exchange proposes to delete the word Order from the defined term, and rename the term ''Non-Displayed.'' In addition, the Exchange proposes to modify the definition of Non-Displayed in its rules and proposes to define it as an ''instruction the User may attach to an order stating that the order is not to be displayed by the System on the EDGX Book.'' [23]

The proposed definition of Non-Displayed differs from the existing definition of Non-Displayed Order in several ways. The Exchange does not propose to carry over to the definition of Non-Displayed in proposed Rule 11.6 the current rule text regarding the priority and ranking of Non-Displayed Orders given its re-categorization as an order instruction described above. The Exchange notes that it is also proposing to amend Rule 11.8 (to be renumbered as Rule 11.9) to outline the priority of orders and the impact of this instruction will be discussed therein. The Exchange also does not propose to carry over to the definition of Non-Displayed in proposed Rule 11.6 the current rule text that states the restriction that the System will not accept Non-Displayed Orders that are priced better than the midpoint of the NBBO.[24] Orders that include a Non-Displayed instruction are currently accepted by the System and posted to the EDGX Book regardless of whether the order is priced better than the midpoint of the NBBO. In such case, a User may include a Cancel Back instruction under proposed Rule 11.6(b) or an instruction for its order to be re-priced pursuant to proposed Rule 11.6(l)(3) described below.[25] Therefore, the Exchange believes it unnecessary to include these provisions in the definition of Non-Displayed as they are redundant with provisions in other rules. Lastly, the Exchange plans to move the definition of Non-Displayed to proposed Rule 11.6(e).

Locking Price (Rule 11.6(f))

Under current Exchange Rule 11.5(c)(4), a re-pricing instruction may be triggered if an order displayed at its limit price would be a Locking Quotation [26] upon entry into the System. The existing rules do not provide a definition of the price at which an order would cause such a violation. Therefore, the Exchange proposes to add a new term, Locking Price, to its rules to specifically define this price as the ''price of an order to buy (sell) that, if, upon entry into the System, or upon return to the System after being routed away, and displayed by the System on the EDGX Book, it would be a Locking Quotation.'' The

[20] Similar optionality is available on other exchanges. *See* Nasdaq Stock Market LLC (''Nasdaq'') Rule 4751(f)(1), and NYSE Arca, Inc. (''NYSE Arca'') Rule 7.31(h)(2).

[21] The Exchange proposes to modify the existing rule text to make clear that an order with a Discretionary Range maintains the ability to execute at its displayed price with discretion to execute at prices to and including a specified, non-displayed price, and not exclusively at those prices. The Discretionary Range may include prices to and more aggressive than the midpoint of the NBBO.

[22] *See* Exchange Rule 11.5(c).

[23] Other exchanges define Non-Displayed similarly, but as a ''Non-Displayed Order.'' *See* Nasdaq Rule 4751(e)(3), and BATS Exchange, Inc. (''BZX'') Rule 11.9(c)(11). In addition, an order may include a Displayed and Non-Displayed Instruction. *See* proposed Rule 11.6(m) *infra*.

[24] The Exchange notes that a similar provision was removed from EDGA Exchange, Inc. (''EDGA'') Rule 11.5(c)(8). *See* Securities Exchange Act Release No. 64962 (July 26, 2011), 76 FR 45896 (August 1, 2011) (SR–EDGA–2011–21).

[25] *See infra* section entitled, ''Re-Pricing of Orders with a Non-Displayed Instruction''.

[26] The term Locking Quotation is proposed to be defined in Rule 11.6(g), and is further discussed below.

introduction of the new defined term would provide additional specificity to, but not change the substance of the existing rules.[27]

Locking Quotation and Crossing Quotations (Rule 11.6(c) and (g))

Currently, Exchange Rule 11.16, Locking and Crossing Quotations in NMS Stocks, defines the terms ''Locking Quotation'' and ''Crossing Quotation.'' Specifically, Locking Quotation is defined as ''[t]he display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.'' A Crossing Quotation is defined as ''[t]he display of a bid (offer) for an NMS stock during Regular Trading Hours at a price that is higher (lower) than the price of an offer (bid) for such NMS stock previously disseminated pursuant to an effective national market system plan.'' The Exchange does not propose any changes to these definitions, other than to clarify that the Locking and Crossing Quotation would be in violation of Rule 610(d) of Regulation NMS and to remove the term ''Regular Trading Hours'' from each definition as the Exchange applies its re-pricing instructions to comply with Rule 610(d) of Regulation NMS (described below) outside of Regular Trading Hours. These definitions would also be relocated to proposed Rule 11.6.

Minimum Execution Quantity (Rule 11.6(h))

The Exchange proposes to introduce, and provide a definition of, a new term—''Minimum Execution Quantity.'' Minimum Execution Quantity is an instruction a User may include with an order that includes a Non-Displayed instruction requiring the System to execute the order to the extent that a minimum quantity can be satisfied by execution against a single order or multiple aggregated orders simultaneously. An order with a Minimum Execution Quantity instruction may be partially executed so long as the execution size is equal to or exceeds the quantity provided in the instruction. The Exchange also proposes to state that, unless the User elects otherwise, any shares remaining after a partial execution will continue to be executed by the System at a size that is equal to or exceeds the quantity provided with the instruction. The Minimum Execution Quantity instruction would no longer apply to an order where the number of shares remaining after a partial execution is less than the quantity provided in the instruction. The Minimum Execution Quantity instruction is not currently defined in the rules, but is currently available in the System.[28]

Minimum Price Variation (Rule 11.6(i))

Exchange Rule 11.7, Price Variations, currently defines the term ''Price Variation.'' Specifically, the existing definition of Price Variation makes clear that bids, offers, or orders in securities traded on the Exchange shall not be made in an increment smaller than: (i) $0.01 if those bids, offers, or orders are priced equal to or greater than $1.00 per share; or (ii) $0.0001 if those bids, offers, or orders are priced less than $1.00 per share; or (iii) any other increment established by the Commission for any security which has been granted an exemption from the minimum price increment requirements of Rule 612(a) or 612(b) of Regulation NMS. The Exchange does not propose to amend the definition other than to remove the term, ''indications of interest'', as indications of interest have not existed on the Exchange since its withdrawal of the Exchange's Step-up order type.[29] In addition, the Exchange proposes to relocate the definition from Rule 11.7 to proposed Rule 11.6.

Pegged (Rule 11.6(j))

The Exchange currently describes its price pegging functionality as a ''Pegged Order'' under current Rule 11.5(c)(6). The Exchange proposes to relocate the language describing this functionality as an instruction under proposed Rule 11.6. Other than as described below, the Exchange does not propose to substantively amend this functionality; the Exchange believes that a User instructing the Exchange to peg an order's price is characteristic of an instruction a User may attach to an order, rather than an order type. Specifically, the Exchange proposes to change the name Pegged Order to Pegged instruction and to define a Pegged instruction as an order instruction to automatically re-price an order in response to changes in the NBBO. The revised definition of Pegged Order as a Pegged instruction would continue to include the following provisions while also providing additional specificity as described below: (i) A User may specify that the order's price will peg to a price a certain amount away from the NBB or NBO (offset); (ii) if an order with a Pegged instruction displayed on the Exchange would lock the market, the price of the order will be automatically adjusted by the System to one Minimum Price Variation below the current NBO (for bids) or to one Minimum Price Variation above the current NBB (for offers); (iii) a new time stamp is created for the order each time it is automatically adjusted; and (iv) orders with a Pegged instruction are not eligible for routing pursuant to Rule 11.11. For purposes of the Pegged instruction, the rule would also state that the System's calculation of the NBBO does not take into account any orders with Pegged instructions that are resting on the EDGX Book. The rule would also state that an order with a Pegged instruction would be cancelled if an NBB or NBO, as applicable, is no longer available.

In addition, the Exchange proposes to further describe the options available when using a Pegged instruction by introducing two new terms—Primary Peg and Market Peg.[30] Specifically, proposed Rule 11.6 would state that a Pegged instruction may be a Market Peg or Primary Peg. An order that includes a Primary Peg instruction will have its price pegged by the System to the NBB, for a buy order, or the NBO for a sell order. A User may, but is not required to, select an offset equal to or greater than one Minimum Price Variation[31] above or below the NBB or NBO that the order is pegged to. An order with a Primary Peg instruction would be eligible to join the Exchange's Best Bid or Offer (''Exchange BBO'') when the EDGX Book has been locked or crossed by another market. If an order with a Primary Peg instruction would create a Locking Quotation or Crossing Quotation, the price of the order would be automatically adjusted by the System to one Minimum Price Variation (discussed below) below the current NBO (for bids) or to one Minimum Price

[27] The term, ''Locking Price'' is similarly defined in the rules of other exchanges. *See, e.g.,* BZX Rule 11.13(a)(1), which defines ''locking price'' as ''. . . prices equal to displayed orders on the other side of the market.''

[28] The minimum execution quantity instruction is available on other exchanges. *See, e.g.,* Nasdaq Rule 4751(f)(5), and National Stock Exchange, Inc. (''NSX'') Rule 11.11(c)(2)(B).

[29] *See* Securities Exchange Act Release No. 64095 (March 18, 2011), 76 FR 16446 (March 23, 2011) (SR–EDGX–2011–06).

[30] The Primary Peg and Market Peg order instructions are available on other exchanges. *See, e.g.,* New York Stock Exchange LLC (''NYSE'') Rule 13 (defining Pegging Interest), and Nasdaq 4751(f)(4).

[31] The term Minimum Price Variation is proposed to be defined in Rule 11.6(i), and is further discussed below.

Variation above the current NBB (for offers).

An order that includes a Market Peg instruction will have its price pegged by the System to the NBB, for a sell order, or the NBO, for a buy order. Historically, the System permitted Users to include an offset amount of zero with a Market Peg instruction. The Exchange now proposes to require that an order with a Market Peg instruction that is to be displayed by the System on the EDGX Book include an offset equal to or greater than one Minimum Price Variation. For an order that is to be displayed by the System on the EDGX Book, the order will be required to have an offset for an order to buy (sell) that is equal to or greater than one Minimum Price Variation below (above) the NBO (NBB) that the order is pegged to. If a User does not select an offset, the System will automatically include an offset on an order to buy (sell) that is equal to one Minimum Price Variation below (above) the NBO (NBB) that the order is pegged to. Requiring an offset is necessary to prohibit an order with a Market Peg instruction from becoming a Locking Quotation. For an order with a Non-Displayed instruction, a User may, but is not required to, select an offset for an order to buy (sell) that is equal to or greater than one Minimum Price Variation below (above) the NBO (NBB) that the order is pegged to.

The Exchange also proposes to further describe how an order with a Pegged and Non-Displayed instruction is handled by the System when its offset causes it to be priced more aggressive than the midpoint of the NBBO. In such case, the order will be ranked at the midpoint of the NBBO pursuant to the re-pricing instruction under Rule 11.6(l)(3), described below, with discretion to execute to the price established by the offset, or the NBB (NBO) where the offset for an order to sell (buy) is equal to or more aggressive than the NBB (NBO).

Operation of Limit Orders With a Pegged Instruction

The following examples illustrate the operation of Limit Orders with a Pegged instruction.

Example No. 1. Buy Limit Order with a Primary Peg instruction and Offset

Assume the NBBO is $10.00 by $10.06. A Limit Order is entered into the System to buy 500 shares, with a Primary Peg instruction and offset of +$0.02. The order will be pegged to the NBB and initially displayed by the System on the EDGX Book at $10.02.

Example No. 2. Sell Limit Order with a Primary Peg instruction and Offset

Assume the NBBO is $10.00 by $10.06. A Limit Order is entered into the System to sell 500 shares, with a Primary Peg instruction and offset of −$0.02. The order will be pegged to the NBO and initially displayed by the System on the EDGX Book at $10.04.

Example No. 3. Buy Limit Order with a Market Peg instruction and Offset

Assume the NBBO is $10.00 by $10.10. A Limit Order is entered into the System to buy 500 shares with a Market Peg instruction and offset of −$0.01. The order will be pegged to the NBO and initially displayed by the System on the EDGX Book at $10.09.

Example No. 4. Sell Limit Order with a Market Peg instruction and Offset

Assume the NBBO is $10.00 by $10.10. A Limit Order is entered to sell 500 shares with a Market Peg instruction and offset of +$0.01, and a second Limit Order is entered to sell 800 shares with a Market Peg instruction and offset of +$0.03. The orders will be pegged to the NBB and initially displayed by the System on the EDGX Book at $10.01 and $10.03, respectively. If the NBBO then changes to $10.02 by $10.10, the orders will be re-priced and displayed at $10.03 and $10.05, respectively.

Example No. 5. Buy Limit Order with a Non-Displayed and Market Peg instruction and Offset

Assume the NBBO is $10.00 by $10.05, resulting in a midpoint of the NBBO of $10.025. A Limit Order is entered into the System to buy 500 shares with a Non-Displayed and Market Peg instruction and offset of −$0.02. Because the order's offset causes it to be priced more aggressively than the midpoint of the NBBO, it will be ranked at $10.025, the midpoint of the NBBO, with discretion to execute to $10.03, the price established by the offset.[32]

Permitted Price (Rule 11.6(k))

The Exchange currently defines the term ''Permitted Price'' in Exchange Rule 11.5(c)(4)(B), which states that a short sale order that is subject to the Exchange's short sale price sliding process will ''be re-priced to display at one Minimum Price Variation above the current NBB.'' The Exchange does not propose to amend the definition other than to delete it from Rule 11.5(c)(4)(B) and add relocate it under proposed Rule 11.6.

Re-Pricing (Rule 11.6(l))

The Exchange currently offers various re-pricing instructions which, in all cases, result in the ranking and/or display of an order at a price other than the order's limit price in order to comply with applicable securities laws and Exchange Rules. Specifically, the Exchange's re-pricing instructions that are designed to permit Users to comply with: (i) Rule 610(d) of Regulation NMS; or (ii) Rule 201 of Regulation SHO are currently described under Exchange Rules 11.5(c)(4) as the ''displayed price sliding process'' [33] and ''short sale price sliding process.'' [34] The Exchange proposes to delete Rule 11.5(c)(4) in its entirety and replace it with proposed Rule 11.6(l), which will describe in more detail and provide additional specificity regarding the re-pricing instructions currently available to Users by introducing and defining four new terms with regard to Regulation NMS compliance—Price Adjust, Hide Not Slide, Single Re-Price, and Routed and Returned Re-Pricing, and three new terms with regard to Regulation SHO compliance—Short Sale Price Adjust, Short Sale Price Sliding, and Short Sale Single Re-Price.[35] The Exchange also proposes to describe in its rules the re-

[32] In such cases, the order will be given a new time stamp each time it is re-priced by the System in response to changes in the midpoint of the NBBO.

[33] The ''displayed price sliding process'' is currently described under Rule 11.5(c)(4)(A) as follows:

An EDGX Only Order that, at the time of entry, would cross a Protected Quotation will be re-priced to the locking price and ranked at such price in the EDGX Book. An EDGX Only Order that, if at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the System at one minimum price variation (''MPV'') below the current NBO (for bids) or to one MPV above the current NBB (for offers) (collectively, the ''displayed price sliding process''). In the event the NBBO changes such that the EDGX Only Order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the original locking price.

[34] The ''short sale price sliding process'' is currently described under Rule 11.5(c)(4)(B)—(C) as follows:

An EDGX Only Order that, at the time of entry, could not be executed or displayed pursuant to Rule 201 of Regulation SHO will be re-priced by the System to prevent execution or display at or below the current NBB (such entire process called the ''short sale price sliding process''). Any EDGX Only order subject to such re-pricing by the System will be re-priced to display at one MPV above the current NBB (''Permitted Price''). Following the initial adjustment provided for in this paragraph (B), the EDGX Only Order will, to reflect declines in the NBB, continue to be re-priced at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. The order will receive a new timestamp each time it is re-priced. Alternatively, following the initial adjustment provided for in paragraph (B), the EDGX Only Order may, in accordance with the User's instructions, provided that in all cases the display or execution of such lower prices does not violate Rule 201 of Regulation SHO: (i) Be re-priced one additional time to a price that is above the current NBB but equal to the NBB at the time the EDGX Only Order was received and receive a new timestamp; or (ii) not be adjusted further. In the event the NBB changes such that the price of a Non-Displayed Order subject to short sale price sliding would lock or cross the NBB, the Non-Displayed Order will receive a new timestamp, and will be re-priced by the System to a Permitted Price. EDGX Only Orders marked ''short exempt'' shall not be subject to the short sale price sliding process.

[35] Other exchanges utilize similar re-pricing processes. *See, e.g.,* Chicago Stock Exchange, Inc. (''CHX'') Art. I, Rule 2(b)(1)(C), BZX Rules 11.9(c)(4), (6) and 11.9(g)(2), BATS–Y Exchange, Inc. (''BYX'') Rules 11.9(c)(4), (6) and 11.9(g)(2), and Nasdaq's ''Re-pricing of Orders during Short Sale Period'' described in Nasdaq Rule 4763(e).

pricing instruction for orders that are not displayed by the System on the EDGX Book. By providing additional specificity in proposed Rule 11.6(l) regarding the available re-pricing instructions, the Exchange believes the proposed rules will aid the understanding of Members, Users, and the investing public with respect to the operation of the System and the manner in which orders subject to re-pricing are handled and displayed by the System on the EDGX Book.

The Exchange describes each of these new terms in more detail below and provides specific examples as to how each process operates.

Re-Pricing Instructions To Comply With Rule 610(d) of Regulation NMS

Proposed Rule 11.6(l)(1) sets forth the following re-pricing instructions to comply with Rule 610(d) of Regulation NMS: (i) Price Adjust; (ii) Hide Not Slide; (iii) Single Re-Price; and (iv) and Routed and Returned Re-Pricing. As discussed in more detail under the description of proposed Rule 11.8, the Exchange notes a Limit Order that, if displayed by the System on the EDGX Book at its limit price upon entry would be a Locking Quotation or Crossing Quotation, will be automatically defaulted by the System to the Price Adjust instruction, unless the User affirmatively elects: (i) The Cancel Back instruction; (ii) the Hide Not Slide instruction; or (iii) the Single Re-Price instruction.

Price Adjust (Rule 11.6(l)(1)(A))

Under the Price Adjust instruction, where a buy (sell) order would be a Locking Quotation or Crossing Quotation if displayed by the System on the EDGX Book at the time of entry, the order will be displayed and ranked [36] at a price that is one Minimum Price Variation lower (higher) than the Locking Price.[37] The order will be displayed and ranked by the System on the EDGX Book at the Locking Price if: (i) The NBBO changes such that the order, if displayed at the Locking Price, would not be a Locking Quotation or Crossing Quotation, including where an ISO with a TIF instruction of Day is entered into the System and displayed on the EDGX Book on the same side of the market as the order at a price that is equal to or more aggressive than the Locking Price.[38] The order would not be subject to further re-ranking and will be displayed by the System on the EDGX Book at the Locking Price until executed or cancelled by the User. The order will receive a new time stamp at the time an order is re-ranked. Pursuant to proposed renumbered Rule 11.9, all orders that are re-ranked and re-displayed pursuant to the Price Adjust instruction will retain their priority as compared to each other based upon the time such orders were initially received by the System.

Operation of Orders With a Price Adjust Instruction

The following examples [39] illustrate the operation of the Price Adjust instruction.

Example No. 1. A Limit Order to Buy Executes at Displayed Price

Assume the NBBO is $10.00 by $10.10. If a non-routable Limit Order to buy 100 shares at $10.11 with a Price Adjust instruction is to be displayed by the System on the EDGX Book, such order will be displayed and ranked at $10.09. If a Limit Order to sell 100 shares at $10.09 or less is entered into the System, such order would execute against the resting Limit Order to buy at $10.09.

Example No. 2. The Displayed Price of a Limit Order to Buy moves up one minimum Price Variation

Assume the NBBO is $10.00 by $10.10. If a non-routable Limit Order with a Price Adjust instruction to buy 100 shares at $10.11 is to be displayed by the System on the EDGX Book, such order will be displayed and ranked at $10.09. If the NBO subsequently moves to $10.11, the order will be displayed and ranked at $10.10 and given a new time stamp. If the NBO moves to $10.12, the order will remain ranked and displayed at $10.10, the Locking Price.

Hide Not Slide (Rule 11.6(l)(1)(B))

If the User elects the Hide Not Slide instruction, where a buy (sell) order would be a Locking Quotation or Crossing Quotation if displayed by the System on the EDGX Book at the time of entry, the order will be displayed at a price that is one Minimum Price Variation lower (higher) than the Locking Price, will be ranked at the midpoint of the NBBO with discretion to execute at the Locking Price; provided, however, that if a contra-side order that equals the Locking Price is displayed by the System on the EDGX Book, the order will be ranked at the midpoint of the NBBO but its discretion to execute at the Locking Price will be suspended unless and until there is no contra-side displayed order on the EDGX Book that equals the Locking Price. Where the NBBO changes such that the order, if displayed by the System on the EDGX Book at the Locking Price would not be a Locking Quotation or Crossing Quotation, the System will rank and display such orders at the Locking Price. The order will not be subject to further re-ranking and will be displayed by the System on the EDGX Book at the Locking Price until executed or cancelled by the User. The order will receive a new time stamp when it is ranked at the Locking Price. All orders that are re-ranked and re-displayed by the System on the EDGX Book pursuant to the Hide Not Slide instruction will retain their priority as compared to each other based upon the time such orders were initially received by the System.[40]

Operation of Orders With a Hide Not Slide Instruction

The following examples illustrate the operation of the Hide Not Slide instruction:

Example No. 1. Assume the NBBO is $10.00 by $10.10. A non-routable Limit Order with a Hide Not Slide instruction to buy 100 shares at $10.11 is entered into the System. Such order will be displayed by the System on the EDGX Book at $10.09 with discretion to execute up to $10.10, and be ranked by the System at the new midpoint of the NBBO of $10.095. The NBBO will update to $10.09 by $10.10 and the midpoint of the NBBO will be $10.095. If a Limit Order to sell 100 shares at $10.09 or more is entered into the System, such order would execute against the Limit Order at $10.095.

If a Limit Order to sell 100 shares is entered at $10.10 and there are no displayed orders to sell in the System at $10.10, such order will execute against the Limit Order to buy at $10.10.

Example No. 2. Cancellation and Reinstatement of Discretionary Range

Assume the NBBO is $10.00 by $10.10. A Limit Order with a Hide Not Slide instruction to buy 100 shares at $10.10 is entered into the System. The order will be displayed on the EDGX Book at $10.09 with discretion to execute at $10.10, and be ranked by the System at the new NBBO midpoint of $10.095. If a Limit Order with a

[36] For purposes of the description of the re-pricing instructions under proposed Rule 11.6(l), the terms ''ranked'' and ''priced'' are synonymous and used interchangeably.

[37] The Exchange notes that other exchanges offer similar functionality. *See* Nasdaq Rule 4751(f)(7) (Price to Comply Order), BZX Rule 11.9(g)(1) (Display-Price Sliding), BYX 11.9(g)(1) (Display-Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(i) (NMS Price Sliding).

[38] *See* Division of Trading and Markets: Response to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, Question 5.02, *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm* (last visited March 6, 2014).

[39] Unless otherwise noted, the examples included under the description of the re-pricing instructions in this section assume that there is no Top of Book interest on the EDGX Book. Exchange Rule 1.5(dd) defines ''Top of Book'' as ''the best-ranked order to buy (or sell) in the EDGX Book as ranked pursuant to Rule 11.8.'' The Exchange notes that Exchange Rule 11.8 is being renumbered as Exchange Rule 11.9. The definition of ''Top of Book'' under Exchange Rule 1.5(dd) is proposed to be amended by this filing to reflect the updated rule number.

[40] Orders that are re-ranked and re-displayed pursuant to the Hide Not Slide instruction maintain the same priority as orders that are re-ranked and re-displayed pursuant to the Routed and Returned Re-Pricing instruction at the same price. *See* proposed Exchange Rules 11.9(a)(2)(B)(i) and (C)(ii).

Post Only instruction to sell 100 shares at $10.10 is entered into the System, the buy order with the Hide Not Slide instruction will have its discretion to execute at $10.10 suspended. If the sell order with a Post Only instruction of 100 shares at $10.10 is then canceled, the buy order with a Hide Not Slide instruction with have its discretion to $10.10 reinstated.

Example No. 3. The Displayed Price of a Limit Order to Buy Moves up One Minimum Price Variation

Assume the NBBO is $10.00 by $10.10. A non-routable Limit Order with a Hide Not Slide instruction to buy 100 shares at $10.11 is entered into the System. Such order will be displayed by the System on the EDGX Book at $10.09 with discretion to execute up to $10.10, the Locking Price, and will be ranked at the new midpoint of the NBBO of $10.095. The NBBO will update to $10.09 by $10.10 and the midpoint of the NBBO will be $10.095. If the NBO moves to $10.11, the Limit Order to buy will be ranked and displayed at $10.10, the Locking Price. If the NBBO then moves to $10.10 by $10.12, the Limit Order to buy will remain ranked and displayed at $10.10, the Locking Price.

Example No. 4. Resting Sell Order Prevents Displayed Limit Order with a Post Only Instruction to Buy from Executing at Locking Price

Assume the NBBO is $10.00 by $10.10. Also, assume there is a Limit Order with a Displayed instruction to sell 100 shares at $10.10 on the EDGX Book. A Limit Order with a Displayed, Post Only, and Hide Not Slide instruction to buy 100 shares at $10.11 is entered into the System. The Limit Order with the Displayed, Post Only, and Hide Not Slide instructions will be ranked at $10.095 and displayed by the System on the EDGX Book at $10.09. While the order would have discretion to trade up at the Locking Price of $10.10, that discretion is suspended and the order will not be able to execute at the Locking Price of $10.10 because: (i) There is a displayed sell order at that price on the EDGX Book; and (ii) the Limit Order with a Post Only instruction prohibits execution at its time of entry. If a Limit Order to sell 100 shares at $10.10 is entered into the System, such order will not execute against the Limit Order with both the Post Only and Hide Not Slide instructions to buy at $10.10 because the resting displayed Limit Order to sell 100 shares at $10.10 has time priority. Assuming no changes to the above conditions, if a Limit Order to sell 100 shares at $10.09 is entered into the System, it would execute against the Limit Order with a Post Only and Hide Not Slide instruction to buy at $10.095.

Routed and Returned Re-Pricing (Rule 11.6(l)(1)(B)(i))

The portion of a Limit Order that is returned to the System after being routed away in accordance with Rule 11.9(b) (proposed to be renumbered as Rule 11.11), that, if displayed by the System on the EDGX Book at its limit price at the time of entry in the System, would be a Locking Quotation or Crossing Quotation, will be automatically defaulted by the System to the Routed and Returned Re-Pricing instruction, unless the User affirmatively elects the Cancel Back instruction, Price Adjust instruction, Hide Not Slide instruction, or the Single Re-Price instruction.

Under the Routed and Returned Re-Pricing instruction, a Limit Order that is returned to the EDGX Book after being routed to an away Trading Center with a limit price that would cause the order to be a Locking Quotation or Crossing Quotation will be displayed by the System on the EDGX Book at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell), will be ranked at the midpoint of the NBBO with discretion to execute at the Locking Price; provided, however, that if a contra-side order with a Post Only instruction that equals the Locking Price is displayed by the System on the EDGX Book, the order will be ranked at the midpoint of the NBBO but its discretion to execute at the Locking Price will be suspended unless and until there is no contra-side order displayed by the System on the EDGX Book that equals the Locking Price. Each time the NBBO is updated, a buy (sell) order subject to the Routed and Returned Re-Pricing instruction will be further adjusted so that it continues to be displayed by the System on the EDGX Book at one Minimum Price Variation below (above) the NBO (NBB) and will be ranked at the updated midpoint of the NBBO with discretion to execute at the Locking Price until the price of such order reaches its limit price, at which point it will remain displayed by the System on the EDGX Book at that price and cease to be further adjusted pursuant to the Routed and Returned Re-Pricing instruction. The order will receive a new time stamp when it is returned to the EDGX Book and each time it is subsequently re-ranked. Pursuant to Rule 11.9, all orders that are re-ranked and re-displayed pursuant to the Routed and Returned Re-Pricing instruction will retain their priority as compared to each other at the same price based upon the time such orders were initially received by the System or upon return to the System after being routed away.[41]

Operation of Orders With a Routed and Returned Re-Pricing Instruction

The following examples illustrate the operation of the Routed and Returned Re-Pricing instruction:

Assume the NBBO is $10.00 by $10.10. Also, assume there are no sell orders resting on the EDGX Book. A Limit Order to buy 100 shares at $10.11 is returned to the EDGX Book after being routed to an away Trading Center. If displayed by the System on the EDGX Book, the returned Limit Order would be a Crossing Quotation. The order would default to the Routed and Returned Re-Pricing instruction unless the User affirmatively elects the Cancel Back instruction, the Price Adjust instruction, the Hide Not Slide instruction, or the Single Re-Price instruction. The Limit Order subject to the Routed and Returned Re-Pricing instruction will be ranked at $10.095, with discretion to execute up to $10.10, and displayed by the System on the EDGX Book at $10.09 with a new time stamp. If the NBO moves to $10.11, the Limit Order subject to the Routed and Returned Re-Pricing instruction will be re-priced and ranked at the new midpoint of the NBBO at $10.105 with discretion to execute up to $10.11, and displayed by the System on the EDGX Book at $10.10 with a new time stamp. If the NBO then moves to $10.12, the Limit Order subject to the Routed and Returned Re-Pricing instruction will now be ranked and displayed by the System on the EDGX Book at $10.11, its limit price. Then, a new order with both a Hide Not Slide and Post Only instruction is entered to buy 300 shares at 10.11. The order with the Hide Not Slide instruction will also be ranked at $10.105, with discretion to execute up to $10.11, and displayed by the System on the EDGX Book at $10.10. If the NBO moves to $10.12, the Limit Order subject to the Routed and Returned Re-Pricing instruction and the order with the Hide Not Slide instruction will both be re-priced, ranked, and displayed at $10.11. The Routed and Returned instruction and the Hide Not Slide instruction receive the same priority treatment, so the order with the Routed and Returned instruction maintains time priority over the order with the Hide Not Slide instruction, since the order with the Routed and Returned instruction was placed on the EDGX Book first.

Single Re-Price (Rule 11.6(l)(1)(C))

If the User selects the Single Re-Price instruction, where an order would be a Locking Quotation or Crossing Quotation if displayed by the System on the EDGX Book at the time of entry, the order will be displayed and ranked at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell)

[41] Orders that are re-ranked and re-displayed pursuant to the Routed and Returned Re-Pricing instruction maintain the same priority as orders that are re-ranked and re-displayed pursuant to the Hide Not Slide instruction at the same price. *See* proposed Exchange Rules 11.9(a)(2)(B)(i) and (C)(ii).

and will not be subject to any further adjustment by the System.[42]

Operation of Orders With a Single Re-Price Instruction

The following examples illustrate the operation of the Single Re-Price instruction:

Example No.1: Limit Order to Buy that is Subject to the Single Re-Price Instruction Executes at Displayed Price

Assume the NBBO is $10.00 by $10.10. If a non-routable Limit Order with a Single Re-Price instruction to buy 100 shares at $10.11 is entered into the System, such order will be ranked and displayed by the System on the EDGX Book at $10.09 and will not be further adjustments by the System. If a Limit Order to sell 100 at $10.09 is entered into the System, such order would execute against the Limit Order to buy at $10.09.

Example No. 2. The Displayed Price of a Limit Order to Buy that is Subject to the Single Re-Price Instruction

Assume the NBBO is $10.00 by $10.10. If a non-routable Limit Order with a Single Re-Price instruction to buy 100 shares at $10.11 is entered into the System, such order will be ranked and displayed by the System on the EDGX Book at $10.09. If the NBBO moves to $10.09 by $10.11, the Limit Order subject to the Single Re-Price instruction will not be further adjusted and will remain ranked and displayed by the System on the EDGX Book at $10.09.

Re-Pricing Instructions To Comply With Rule 201 of Regulation SHO

Proposed Exchange Rule 11.6(l)(2) sets forth the following re-pricing instructions for an order with a Short Sale instruction to comply with Rule 201 of Regulation SHO: (i) Short Sale Price Adjust; (ii) Short Sale Price Sliding; and (iii) Short Sale Single Re-Price. The Exchange notes that a Limit Order to sell with a Short Sale instruction that cannot be displayed by the System on the EDGX Book or executed at its limit price at the time of entry into the System because a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[43] will be automatically defaulted by the System to the Short Sale Price Adjust instruction, unless the User affirmatively elects: (i) The Cancel Back instruction; (ii) the Short Sale Price Sliding instruction; or (iii) the Short Sale Single Re-Price instruction. Like current Rule 11.5(c)(4)(E), orders to sell with both a Short Sale and a Short Exempt instruction are not eligible for any of the re-pricing instructions to comply with Rule 201 of Regulation SHO and will execute, display and/or route without regard to whether the order is at a Permitted Price above the NBB or whether a Short Sale Circuit Breaker in effect. In addition, when a Short Sale Circuit Breaker is in effect, the re-pricing instructions to comply with Rule 610(d) of Regulation NMS will be ignored with regard to a sell order that contains a Short Sale instruction. In such case, the below re-pricing instructions to comply with Rule 201 of Regulation SHO will apply.

Short Sale Price Adjust (Rule 11.6(l)(2)(A))

Under the Short Sale Price Adjust instruction, the System will cause an order to sell with a Short Sale instruction to be ranked and displayed by the System on the EDGX Book at the Permitted Price.[44] Following the initial ranking, the order to sell with a Short Sale instruction will, to the extent the NBB declines, continue to be re-ranked and displayed by the System on the EDGX Book at the Permitted Price down to the order's limit price. The order to sell with a Short Sale instruction will receive a new time stamp each time it is re-ranked. All orders to sell with Short Sale instructions that are re-ranked and re-displayed by the System on the EDGX Book pursuant to the Short Sale Price Adjust instruction will retain their priority as compared to each other based upon the time such orders were initially received by the System.

Operation of Orders With a Short Sale Price Adjust Instruction

The below example illustrates the Short Sale Price Adjust instruction.

Assume the NBBO is $10.00 by $10.10 and the Short Sale Circuit Breaker is in effect for the relevant security. If a Limit Order[45] to sell 200 shares at $9.95 is entered into the System with a Short Sale instruction and is subject to the Short Sale Price Adjust instruction, such order will be ranked and displayed at $10.01. If a Limit Order to buy 100 shares at $10.01 is entered into the System, such order would execute at $10.01 against the Limit Order to sell with the Short Sale and Short Sale Price Adjust instructions.

If the NBBO then moves to $9.99 by $10.01, the Limit Order to sell with the Short Sale and Short Sale Price Adjust instructions will be ranked and displayed by the System on the EDGX Book at $10.00. If the NBBO moves to $9.96 by $10.00, the order will be re-ranked and displayed by the System on the EDGX Book at $9.97. If the NBBO moves to $9.93 by $9.97, the order will be re-ranked and displayed by the System on the EDGX Book at $9.95, and will not be re-ranked further because the order reached its limit price.

Short Sale Price Sliding (Rule 11.6(l)(2)(B))

If the User selects the Short Sale Price Sliding instruction, the System will cause a Limit Order to sell with a Short Sale instruction to be displayed by the System on the EDGX Book at the Permitted Price and be ranked at the midpoint of the NBBO. Following the initial ranking, the order will, to the extent the NBB declines, be re-ranked and displayed by the System on the EDGX Book one additional time at a price that is equal to the NBB at the time the order was received by the System and will receive a new time stamp. All orders to sell with Short Sale instructions that are re-ranked and re-displayed by the System on the EDGX Book pursuant to the Short Sale Price Sliding instruction will retain their priority as compared to each other based upon the time the orders were initially received by the System.

Operation of Orders With a Short Sale Price Sliding Instruction

The below example illustrates the Short Sale Price Sliding instruction.

Assume the NBBO is $10.00 by $10.10 and a Short Sale Circuit Breaker is in effect for the security. A User enters a sell order into the System with a Short Sale instruction for 200 shares at $9.95 and elects the Short Sale Price Sliding instruction. The order will be ranked at $10.005 and displayed by the System on the EDGX Book at $10.01.

[42] The Exchange notes that other exchanges offer similar functionality. *See* Nasdaq Rule 4751(f)(8) (Price to Comply Post Order), BZX Rule 11.9(g)(1) (Display-Price Sliding), BYX 11.9(g)(1) (Display-Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(i) (NMS Price Sliding).

[43] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as EDGX, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

[44] The Exchange notes that other exchanges offer similar functionality. *See* Nasdaq Rule 4763(e) (Re-Pricing of Orders During Short Sale Period), BZX Rule 11.9(g)(2) (Short Sale Price Sliding), BYX 11.9(g)(2) (Short Sale Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(ii) (Short Sale Price Sliding).

[45] Assume for purposes of this example that a Limit Order contains either a Post Only or Book Only instruction.

In the above example, if the NBBO then moves to $9.99 by $10.01, the order will be re-ranked and displayed by the System on the EDGX Book at $10.00. If the NBBO moves to $9.98 by $10.00, the order will remain displayed at $10.00 and not be subject to further re-ranking because the price of the order reached the bid at which it could not execute when it first arrived in the System because a Short Sale Circuit Breaker was in effect.

Short Sale Single Re-Price (Rule 11.6(l)(2)(C))

If the User elects the Short Sale Single Re-Price instruction, the System will cause a Limit Order to sell with a Short Sale instruction that is entered into the System to be ranked and displayed by the System on the EDGX Book at the Permitted Price.[46] Following the initial ranking provided for in this rule, the order will not be adjusted further to reflect a decline in the NBB.

Operation of Orders With a Short Sale Single Re-Price Instruction

The below example illustrates the Short Sale Single Re-Price instruction.

Assume the NBBO is $10.00 by $10.10 and a Short Sale Circuit Breaker is in effect for the security. A User enters an order into the System to sell 200 shares at $9.95 with a Short Sale instruction and the Short Sale Single Re-Price instruction. Such order will be ranked and displayed by the System on the EDGX Book at $10.01. If a Limit Order buy 100 at $10.01 is entered into the System, such order would execute at $10.01 against the sell order with the Short Sale instruction and Single Re-Price instruction.

In the above example, if the NBBO then moves to $9.99 by $10.01, the order to sell with the Short Sale instruction and the Single Re-Price instruction will not re-priced and will remain Displayed at $10.01.

Re-Pricing of Orders With a Non-Displayed Instruction (Rule 11.6(l)(3))

Proposed Rule 11.6(l)(3) states that an order entered into the System that includes a Non-Displayed instruction and is priced better than the midpoint of the NBBO, will be ranked at the midpoint of the NBBO with discretion to execute to its limit price. Ranking the order at the midpoint of the NBBO enables the System to avoid an internal cross on the EDGX Book due to the existence of Mid-Point Match Orders, which reside on the EDGX Book at the midpoint of the NBBO. The price of the order will be automatically adjusted by the System in response to changes in the NBBO to be re-ranked at the midpoint of the NBBO until it reaches its limit price. A User may affirmatively elect that a buy (sell) order with a Non-Displayed instruction Cancel Back when the order's limit price is greater (less) than the NBO (NBB). A new time stamp is created for the order each time the order is re-ranked due to a change to the midpoint of the NBBO. Pursuant to Rule 11.9, all orders with a Non-Displayed instruction that are re-ranked at the midpoint of the NBBO will retain their priority as compared to each other based upon the time such orders were ranked at the midpoint of the NBBO.

Operation of Orders With a Non-Displayed Instruction

The below examples demonstrate how an order with a Non-Displayed instruction may be ranked at the midpoint of the NBBO.

Example No. 1. Assume the NBBO is $24.00 × $25.00. If an incoming order with a Non-Displayed instruction is entered into the System to buy at $25.00, it will be ranked by the System at $24.50 with discretion to $25.00, its limit price.

Example No. 2. Assume the NBBO is $20.00 by $25.00. If an incoming order with a Non-Displayed instruction is entered into the System to buy at $22.00, because the limit price is lower than the midpoint of the NBBO ($22.50), it will remain ranked by the System on the EDGX Book at $22.00. If the midpoint of the NBBO moves below $22.00, the order with a Non-Displayed instruction will be ranked by the System at the then current mid-point of the NBBO.

Reserve Quantity and Replenishment Amounts (Rule 11.6(m))

Exchange Rule 11.5(c)(1) currently defines a ''Reserve Order'' as ''[a] limit order with a portion of the quantity displayed ('display quantity') and with a reserve portion of the quantity ('reserve quantity') that is not displayed.'' The Exchange believes that a Reserve Order is more appropriately described as an order instruction, rather than an order type. Therefore, the Exchange proposes to delete the term Reserve Order and replace it with the order instruction ''Reserve Quantity'' in proposed Rule 11.6. The substantive definition of Reserve Quantity would remain the same. Specifically, proposed Rule 11.6 would define Reserve Quantity to mean the portion of an order with a Non-Displayed instruction in which a portion of that order is also displayed on the EDGX Book. The Exchange believes that reclassifying a Reserve Order as Reserve Quantity is consistent with the current System's functionality that permits a User when entering an order into the System to instruct the System to not display a portion of that order on the EDGX Book. The Exchange also proposes to include within the definition that both the portion of the order with a Displayed instruction and the Reserve Quantity of the order are available for execution against incoming orders.

The Exchange proposes to include in proposed Rule 11.6 language that describes how a User entering an order into the System with a Reserve Quantity may instruct the System to update the displayed quantity by setting a replenishment amount.[47] Proposed Rule 11.6(m) would also describe the two replenishment instructions offered by the Exchange which are: (i) Fixed Replenishment; and (ii) Random Replenishment.[48] Where the displayed quantity of an order is reduced to less than a Round Lot, the System will, in accordance with the replenishment instruction selected by the User, replenish the displayed quantity from the Reserve Quantity by at least a single Round Lot. A new time stamp is created for the displayed portion of the order each time it is replenished from the Reserve Quantity, while the Reserve Quantity retains the time stamp of its original entry.[49] Where the combined amount of the displayed quantity and Reserve Quantity of an order is reduced to less than one Round Lot, the order will be treated as an order with a Displayed instruction for purposes of execution priority under proposed renumbered Rule 11.9.

Under the Fixed Replenishment instruction, the displayed quantity of an order is replenished by a fixed quantity designated by the User. The Fixed Replenishment quantity for the order equals the initial displayed quantity designated by the User. The displayed

[46] The Exchange notes that other exchanges offer similar functionality. *See* Nasdaq Rule 4763(e) (Re-Pricing of Orders During Short Sale Period), BZX Rule 11.9(g)(2) (Short Sale Price Sliding), BYX 11.9(g)(2) (Short Sale Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(ii) (Short Sale Price Sliding).

[47] Other exchanges offer similar functionality for refreshing the displayed portion of an order from a Reserve Quantity. *See, e.g.,* Nasdaq Rule 4751(f)(2) (Reserve Orders) and NYSE Rule 13 (Reserve Order Types).

[48] The Random Replenishment instruction is consistent with functionality described in existing Exchange rules related to the objective of a User to avoid providing information that an order has Reserve Quantity. Exchange Rule 13.8(b) contemplates the subsequent replenishment of ''Reserve Orders'' by permitting Users to obfuscate their order identification numbers on the Exchange's Book Feed when replenishing the displayed quantity of a Reserve Order.

[49] The Exchange notes that other exchanges maintain similar time stamp functionality when replenishing a displayed amount of an order from the order's undisplayed quantity. *See* Nasdaq Rule 4751(f)(2) (Reserve Orders), and NYSE Rule 13 (Reserve Order Types, Minimum Display Reserve Order).

replenishment quantity selected by the System may not be less than a single Round Lot or greater than the remaining Reserve Quantity. As set forth in proposed rule 11.8(b)(5) discussed below, unless the User selects the Random Replenishment instruction, the System will automatically default the order to the Fixed Replenishment instruction with a replenishment value equal to the displayed quantity of the order.

Under the Random Replenishment instruction, both the actual quantity of the order that will be initially displayed by the System on the EDGX Book and subsequent displayed replenishment quantities are randomly determined by the System within a replenishment range established by the User. In particular, the User entering an order into the System subject to the Random Replenishment instruction must select a quantity around which the replenishment range is established and a replenishment value. The actual quantity that will be initially displayed, as well as subsequent displayed replenishment quantities, will then be determined by the System randomly selecting a number of shares in Round Lots within a replenishment range that is between: (i) The quantity around which the replenishment range is established minus the replenishment value; and (ii) the quantity around which the replenishment range is established plus the replenishment value. In no case can the displayed replenishment quantity exceed the remaining Reserve Quantity of the order. The displayed replenishment quantity selected by the System may not be less than a single Round Lot or greater than the remaining Reserve Quantity.

Operation of Orders With Replenishment Amounts

The following examples illustrate the operation of replenishment amounts.

Fixed Replenishment

Example No. 1. A User enters an order into the System to buy 10,000 shares at $100 with a displayed quantity of 1,000 shares and a Reserve Quantity of 9,000 shares. The order defaults to a Fixed Replenishment quantity of 1,000 shares, equal to its displayed quantity. An inbound Market Order to sell 400 shares is entered into the System and executes against the displayed quantity of 1,000 shares, resulting in a remaining displayed quantity of 600 shares. Another Market Order to sell 600 shares is entered into the System and executes against the 600 displayed shares. The displayed quantity is then replenished by the System from the Reserve Quantity to the order's original displayed quantity of 1,000 shares, resulting in a remaining Reserve Quantity of 8,000 shares.

Example No. 2. A User enters Order No. 1, an order to buy 6,000 shares at $30.50, the NBB, with a displayed quantity of 1,000 shares and a Reserve Quantity of 5,000 shares. A User then enters Order No. 2 to buy 600 shares at $30.50 with no Reserve Quantity. Subsequently, an inbound Market Order to sell 2,000 shares is entered into the System. The order to sell first executes against the displayed quantity of 1,000 shares of the Order No. 1, then executes against the full 600 shares of Order 2, and then executes 400 shares from the Reserve Quantity of Order No. 1. The displayed quantities of Order Nos. 1 and 2 execute in time priority, followed by the Reserve Quantity of Order No. 1. The display quantity of Order No. 1 is then replenished for 1,000 shares, leaving a Reserve Quantity of 3,600 shares.

Random Replenishment

Example No. 1. A User enters an order into the System to buy 10,000 shares at $100 and the User selects Random Replenishment with a quantity of 1,000 shares around which the replenishment range is established and a replenishment value of 400 shares. Under Random Replenishment, the System will generate the actual quantity of the order that will be initially displayed by the System on the EDGX Book and subsequent displayed replenishment quantities within a replenishment range that is calculated by adding and subtracting the 400 share replenishment value from the order's quantity of 1,000 shares around which the replenishment range is to be established. Hence, for this order, 1,000 shares plus or minus 400 shares equals a replenishment range of 600 to 1,400 shares. Assume the System randomly chooses an initial displayed quantity of 800 shares, resulting in a Reserve Quantity of 9,200 shares. An inbound Market Order to sell 800 shares is entered into the System and executes against the 800 share displayed quantity. Under Random Replenishment, the displayed quantity is randomly replenished to a new Round Lot quantity within the replenishment range of 600 to 1,400 shares. Assume the System selects a replenishment quantity of 1,200 shares. The System will then display 1,200 shares to buy at $100, resulting in a Reserve Quantity of 8,000 shares.

Example No. 2. A User enters an order into the System to buy 5,000 shares at $100 and the User selects Random Replenishment with a quantity of 2,000 shares around which the replenishment range is established and a replenishment value of 1,000 shares. Under Random Replenishment, the System will generate the actual quantity of the order that will be initially displayed by the System on the EDGX Book and subsequent displayed replenishment quantities within a replenishment range that is calculated by adding and subtracting the 1,000 share replenishment value from the order's quantity of 2,000 shares around which the replenishment range is established. Hence, for this order, 2,000 shares plus or minus 1,000 shares equals a replenishment range of 1,000 to 3,000 shares. Assume the System randomly chooses an initial display quantity of 2,500 shares, resulting in a Reserve Quantity of 2,500 shares. A Market Order to sell 2,500 shares is entered into the System and is executed against the displayed quantity of 2,500 shares. Because the upper end of the replenishment range of 3,000 shares exceeds the remaining Reserve Quantity of 2,500 shares, the replenishment range is reset by the System to be between 1,000 shares and 2,500 shares. Assume the System selects a Random Replenishment of 1,100 shares. The System will then display on the EDGX Book 1,100 shares to sell at $100, resulting in a Reserve Quantity of 1,400 shares. The System will further reset the replenishment range to be between 1,000 shares and 1,400 shares. If, after subsequent executions, the lower end of the replenishment range exceeds the remaining Reserve Quantity, the System will generate a replenishment quantity that is equal to the remaining Reserve Quantity.

Routing/Posting Instructions (Rule 11.6(n))

As discussed in more detail below, the Exchange proposes to describe the routing and posting instructions available to Users under the Exchange's rules under new proposed Rule 11.6(n). Specifically, proposed Rule 11.6(n) defines the following routing and posting instructions that a User may select, depending on the order type: (i) Aggressive; (ii) Super Aggressive; (iii) Book Only; (iv) Post Only; (v) Destination Specified; and (vi) Destination-on-Open.

The Exchange proposes to introduce two new terms to its rules—Aggressive and Super Aggressive. Aggressive is an order instruction that directs the System to route such order if an away Trading Center crosses the limit price of the order resting on the EDGX Book. Super Aggressive is an order instruction that directs the System to route such order if an away Trading Center locks or crosses the limit price of the order resting on the EDGX Book. The Exchange believes adding definitions for these terms will provide additional transparency to the Exchange's rules.

The Exchange proposes to replace the term ''EDGX Only Order'' with the term ''Book Only,'' revise the definition of EDGX Only Order, and move the new definition to proposed Rule 11.6(n)(3). None of the proposed changes introduce any substantive changes to the operation of the functionality of the System. Specifically, current Rule 11.5(c)(4) defines the term EDGX Only Order as follows:

> [a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.8 and Rule 11.9(a)(4) or cancelled, without routing away to another trading center. The System will default to the displayed price sliding process and short sale price sliding process for an EDGX Only Order unless the User has entered instructions not to use any of the processes.

The Exchange believes that the operation of an EDGX Only Order is indicative of an instruction a User may attach to a Limit Order and not that of a standalone order type. Therefore, the Exchange proposes to delete the word Order from the term, and to define the term as an order instruction. In addition, the Exchange believes that the term Book Only is a more commonly used term in the securities industry. Therefore, the Exchange proposes to replace the term EDGX Only with Book Only. Moreover, the Exchange does not propose to carry over the description of an EDGX Only Order that states it is subject to the Exchange's ''display price sliding process and short sale price sliding process'' unless the User instructs otherwise. The Exchange believes this language is unnecessary and redundant because the applicable defaults are set forth in the proposed revisions to the Exchange's re-pricing instructions, as described in proposed Rule 11.6(l). With these changes, the proposed definition of Book Only reads as follows: ''[a]n order instruction stating that an order will be matched against an order on the EDGX Book or posted to the EDGX Book, but will not route to an away Trading Center.'' [50]

The Exchange also proposes to amend the term ''Post Only Order'' and move it to proposed Rule 11.6(n). Current Exchange Rule 11.5(c)(5) defines the term Post Only Order as the following:

An order that is to be ranked and executed on the Exchange pursuant to Rule 11.8 and Rule 11.9(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the EDGX Book absent an order instruction to the contrary. A EDGX Post Only Order will be subject to the displayed price sliding process and short sale price sliding process unless a User has entered instructions not to use the either or both processes as set forth in paragraph (c)(4) above.

The Exchange proposes to amend the existing language of a ''Post Only Order'' to classify it as a ''Post Only'' instruction. The revised definition would read as follows:

An instruction that may be attached to an order that is to be ranked and executed on the Exchange pursuant to Rule 11.9 and Rule 11.10(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the EDGX Book, except as described below. An order with a Post Only instruction and a Hide Not Slide or Price Adjust instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.[51]

This amended definition would change the rule in the following ways. First, the Exchange believes that the operation of Post Only functionality is indicative of an instruction a User may attach to a Limit Order and not that of a standalone order type. Therefore, the Exchange proposes to delete the word Order from the term, and to define Post Only as an order instruction. The Exchange does not propose to carry over the current description of Post Only functionality that states it is subject to the Exchange's ''display price sliding process and short sale price sliding process'' unless the User instructs otherwise. The Exchange believes this language is unnecessary and redundant because the applicable defaults are set forth in the proposed revisions to the Exchange's re-pricing instructions and order types in proposed Rule 11.6(l). The Exchange also proposes to remove from the definition of Post Only the language that an order with a Post Only instruction will not remove liquidity from the EDGX Book unless ''the User enters an instruction to the contrary.'' The Exchange proposes to replace this language with a description of the specific circumstances under which an order with a Post Only instruction may remove liquidity from the EDGX Book. Specifically, Price Adjust instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.[52]

The Exchange also proposes to include the instruction ''Destination Specified'' in proposed Rule 11.6. The Exchange currently defines the term ''Destination Specific Order'' in Rule 11.5(c)(9) as

A market or limit order that instructs the System to route the order to a specified away trading center or centers, after exposing the order to the EDGX Book. Destination Specific Orders that are not executed in full after routing away are processed by the Exchange as described below in Rule 11.9(a)(4), save where the User has provided instructions that the order reside on the book of the relevant away trading center.

As part of its proposed order type clarification discussed below, the Exchange proposes to amend its rules to classify the operation of a Destination Specific Order as an instruction that may be appended to a Market Order or a Limit Order. In doing so, the Exchange proposes to change the name of the Destination Specific Order to Destination Specified. The Exchange believes that treating the Destination Specific Order not as a standalone order type, but rather as an instruction assists in clarifying the operation of the Exchange's order types. The Exchange further proposes that, depending on the User's routing instructions, an order with a Destination Specified instruction may be processed by the System as described in Rule 11.9(b)(1) (renumbered as 11.10(a)(4)), returned to the User, or posted to the EDGX Book, unless the User instructs that the order reside on the book of the relevant away Trading Center. With these proposed revisions, the definition of Destination Specified reads: ''Destination Specified instructs the System to route the order to a specified away Trading Center or Centers, after exposing the order to the EDGX Book. Such orders that are not executed in full after routing away are processed by the Exchange as described in Exchange Rule 11.10(a)(4), unless the User has provided instructions that the order reside on the book of the relevant away Trading Center.'' The proposed changes do not reflect any substantive change to the operation of the Destination Specified order instruction in the System.

Lastly, Exchange Rule 11.5(c)(10) currently defines the term ''Destination-on-Open Order.'' The Exchange proposes to relocate the Destination-on-Open instruction from Exchange Rule 11.5(c)(10) to proposed Rule 11.6(n)(6). In addition, as part of its proposed order type clarification discussed below, the Exchange proposes to classify Destination-on-Open as an instruction that may be appended to a Market or a Limit Order. As a result, the Exchange proposes deleting the word Order from its name. The Exchange believes that treating Destination-on-Open as an instruction, rather than a standalone order type, will assist in clarifying the operation of the Exchange's order types.

[50] The proposed definition of Book Only is similar to that of other exchanges. *See* BZX Rule 11.9(c)(4) (BATS Only Order), BYX Rule 11.9(c)(4) (BATS Only Order), NSX Rule 11.11(c)(6) (NSX Only Order).

[51] Other exchanges offer similar functionality for Post Only orders. *See* BZX Rule 11.9(c)(6) (BATS Post Only Order) and BYX Rule 11.9(c)(6); *see also* NYSE Rule 13 (Add Liquidity Only Modifier) and NYSE Arca Rule 7.31(nn) (Adding Liquidity Only Order).

[52] Examples may be found under the following section: Operation of Limit Orders with a Displayed and Post Only Instruction, Example, No. 1, Scenario Nos. 2 and 3; and Example, No. 2, Scenario No. 2.

The Exchange also proposes that an unfilled portion of an order with a Destination-on-Open instruction may also be cancelled or rerouted. The proposed change does not involve any substantive changes to the operation of the order instruction in the System.

Short Sale and Short Exempt (Rules 11.6(o) and (p))

Although certain current Exchange rules refer to the terms ''short sale order'' and ''short exempt,''[53] the Exchange rules do not specifically define these terms. Therefore, the Exchange proposes to add definitions for ''Short Sale'' and ''Short Exempt'' as these terms are currently understood by Users of the Exchange and to clarify that each are instructions that a User may include on an order. Specifically, proposed Rule 11.6(o) would state that a ''Short Sale instruction shall have the same meaning as the Short Sale definition contained in Rule 200(a) of Regulation SHO.'' Rule 11.6(p) would define a Short Exempt instruction as a ''an instruction on an order with a Short Sale instruction that satisfies the requirements set forth in Rule 201 of Regulation SHO.''

TIF (Rule 11.6(q))

As described below, the Exchange proposes to describe the TIF instructions available to Users on the Exchange under proposed Rule 11.6(q), to include the following instructions: IOC, Day, FOK, and Good-'til Time (''GTT'').

The Exchange proposes to relocate IOC, Day, and FOK from current Rule 11.5(b) with minor clarifications.[54] Specifically, the Exchange proposes to incorporate the existing definitions of an ''IOC Order,'' ''Day Order'' and ''Fill-or-Kill Order,'' as set forth in Rules 11.5(b)(1)–(3), into proposed Rule 11.6(q). The only change the Exchange proposes to make is to delete the word Order from each term, as the Exchange believes that each term is more accurately described as an order instruction. In addition, the Exchange proposes to include in the definition of Day that an order with a TIF instruction of Day entered into the System before the start of the specified trading session would be placed by the System in a pending state and activated for potential execution upon the start of that trading session.

The Exchange also proposes to include a new TIF instruction of GTT, which will instruct the System that the order is to be cancelled at a specified time of day. A TIF instruction of GTT can be applied to an order eligible for trading in any trading session. Any unexecuted portion of an order with a TIF instruction of GTT will be cancelled at: (i) The expiration of the User's specified time; (ii) at the end of the User's specified trading session(s); or (iii) the end of the trading day, as instructed by the User. In no event shall an order with a TIF instruction of GTT be eligible for execution over multiple trading days.[55]

Trading Center (Rule 11.6(r))

The Exchange also proposes to add a definition of the term ''Trading Center'' to proposed Rule 11.6. Trading Center would be defined as ''[o]ther securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers.'' This definition also exists within Exchange Rule 2.11(a). The term Trading Center appears frequently within Chapter XI and the Exchange believes that repeating this definition in Rule 11.6(r) adds further clarity to its Rules. In addition, the Exchange notes that its proposed definition of Trading Center is consistent with the definition of Trading Center under Rule 600(a)(78) of Regulation NMS.[56]

Units of Trading (Rule 11.6(s))

Rule 11.6 currently provides that ''[o]ne hundred (100) shares shall constitute a 'round lot,' any amount less than 100 shares shall constitute an 'odd lot,' and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a 'mixed lot.'" The Exchange proposes to delete the definition of ''Units of Trading'' as a standalone rule and proposes to relocate it to proposed Rule 11.6(s) with the below modifications.

First, the Exchange proposes to clarify that a Round Lot is 100 shares, unless an alternative number of shares is established as a Round Lot by the listing exchange for the security. This proposed revision acknowledges that for certain securities, a Round Lot is smaller than 100 shares (e.g., for Berkshire Hathaway Class A's ''(BRK.A)'' a Round Lot is one (1) share). Similarly, in Rule 11.8(a)(6) (proposed to be renumbered as Rule 11.9(a)(6)), the Exchange proposes to make an additional conforming change to replace the term ''99 shares or fewer'' with ''less than a Round Lot.'' The Exchange also proposes to clarify the definition of Round Lot under proposed Rule 11.6(s) by adding that orders that are a Round Lot are eligible to be Protected Quotations.

Current Rule 11.5(c)(2) provides that an Odd Lot Order is ''[a]n order to buy or sell an odd lot.'' The Exchange proposes to move this text into proposed Rule 11.6(s)(2) and also amend the definition of Odd Lot to read ''[a]ny amount less than a Round Lot.'' The Exchange also proposes to clarify that orders of Odd Lot size are only eligible to be Protected Quotations if aggregated to form a Round Lot.

Similarly, the Exchange proposes to make conforming amendments to the definition of a Mixed Lot contained in current Rule 11.5(c)(3) and to move such text to Rule 11.6(s)(3). Mixed Lot would be defined as ''[a]ny amount greater than a Round Lot that is not an integer multiple of a Round Lot . . .'' The Exchange also proposes to clarify that Odd Lot portions of an order of Mixed Lot size are only eligible to be Protected Quotations if aggregated to form a Round Lot.[57]

Proposed Rule 11.8, Order Types

The Exchange proposes to add proposed Rule 11.8, Order Types, to outline the characteristics of all orders accepted by the System. Currently, Exchange Rule 11.5 lists twenty-six individual order types.[58] As discussed above, the Exchange believes that most of these individual order types currently set forth under Exchange Rule 11.5 can be reclassified as instructions that may be attached to order types. Thus, the Exchange proposes to delete the content of current Rule 11.5 and replace it with proposed Rule 11.8, which describes the following order types accepted by the

[53] *See* Exchange Rules 11.9(a)(1) and 11.15.

[54] Current Rule 11.5(b) includes two (2) additional TIF instructions of Good-'til-Cancel and Good-'til-Day, which the Exchange proposes to delete from its rules because they are not currently offered by the Exchange.

[55] Other exchanges offer TIF instructions similar to GTT. *See* CHX Rules Art. 1, Rule 2(d)(3) (Good 'Til Date), BZX Rule 11.9(b)(4) (Good 'til Day), BYX Rule 11.9(b)(4) (Good 'til Day), and Nasdaq Rule 4751(h)(4) (System Hours Expire Time).

[56] Under Exchange Act Rule 600(a)(78), ''Trading Center'' is defined as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 242 CFR 600(a)(78).

[57] The Exchange notes that these proposed definitions are similar to Nasdaq Rule 4751(g) (definition of ''Order Size'').

[58] The order types listed under current Exchange Rule 11.5 are: Limit Order, Market Order, IOC Order, Day Order, FOK Order, GTC Order, GTD Order, Reserve Order, Odd Lot Order, Mixed Lot Order, EDGX Only Order, Post Only Order, Pegged Order, MidPoint Match Order, Non-Displayed Order, Destination Specific Order, Destination-on-Open Order, Stop Order, Stop Limit Order, Discretionary Order, NBBO Peg Offset Order, Route Peg Order, Attributable Order, Non-Attributable Order, Intermarket Sweep Order, and Directed Intermarket Sweep Order. *See* Exchange Rule 11.5.

System: Market Orders, Limit Orders, ISOs, MidPoint Match Orders, NBBO Offset Peg Orders, and Route Peg Orders. Proposed Rule 11.8 would describe each order type's functionality and the instructions a User may attach to each. The Exchange reiterates that, unless otherwise stated, it is not proposing to amend its current System functionality. The Exchange believes that the proposed rule change will provide greater specificity and transparency regarding the function of each of the order types and order instructions accepted by the System, including which order types and order instructions can be combined with each other.

Market Orders (Rule 11.8(a))

Exchange Rule 11.5(a)(2) currently defines a ''Market Order'' as:

[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. Market orders shall not trade through Protected Quotations. A market order that is designated as ''EDGX Only'' will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.9(a)(4). Market orders that are not designated as ''EDGX Only'' and that cannot be executed in accordance with Rule 11.9(a)(4) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.9(b)(1). Except with respect to a Destination-on-Open Order, as defined in paragraph (c)(10), below, any portion of a market order that would execute at a price more than $0.50 or 5 percent worse than the consolidated last sale at the time the order initially reaches the Exchange, whichever is greater, will be cancelled. Market orders are not eligible for execution during the Pre-Opening or the Post-Closing Trading Sessions.

Under proposed Rule 11.8(a), the Exchange proposes to amend the definition of a Market Order to clarify its operation and the instructions available to Users when entering a Market Order into the System. The Exchange proposes to carry over the language of current Rule 11.5(a)(2) into proposed Rule 11.8(a).

Proposed Rule 11.8(a) would define a Market Order as ''[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.'' Proposed Rule 11.8(a) would also include descriptions of the instructions that may be attached to a Market Order. First, the rule would make clear that an order may include a Stop Price that will convert the order into a Market Order when the Stop Price is triggered. An order to buy converts to a Market Order when a consolidated last sale in the security occurs at, or above, the specified Stop Price. An order to sell converts into a Market Order when the consolidated last sale in the security occurs at, or below, the specified Stop Price. This functionality is currently described in the Exchange's rules as a Stop Order under Rule 11.5(c)(11). The Exchange believes that a Stop Order is more appropriately described as an order instruction for a Market Order, rather than a stand-alone order type. Therefore, the Exchange proposes to delete the term Stop Order and replace it with the order instruction Stop Price in proposed Rule 11.8(a)(1). The proposed definition of Stop Price will remain the same as the current definition of Stop Order.

Proposed Rule 11.8(a)(2) would state that unless otherwise instructed by the User, the System will automatically default a Market Order to a TIF instruction of Day. A User may instead select TIF instructions of IOC or FOK for a Market Order. If a Market Order includes a TIF instruction of FOK, any portion of the Market Order not executed immediately after entry into the System will be cancelled. If a Market Order includes a TIF instruction of IOC, any portion of the Market Order not executed after checking the System for available shares, and, if applicable, after return to the System after being routed to an away Trading Center, will be cancelled. A Market Order may not trade through a Protected Quotation.

Market Orders may be an Odd Lot, Round Lot, or Mixed Lot. A User may attach a Minimum Execution Quantity instruction to a Market Order with a TIF instruction of IOC. Under proposed renumbered Rule 11.10(a)(3)(A), where a non-routable buy (sell) Market Order is entered into the System and the NBO (NBB) is greater (lesser) than the Upper (Lower) Price Band, such order will be posted by the System to the EDGX Book and priced at the Upper (Lower) Price Band, unless (i) the order includes a TIF instruction of IOC or FOK, in which case it will be cancelled if not executed, or (ii) the User has entered a Cancel Back instruction.[59] The Exchange also proposes under Rule 11.8(a)(4) that a Market Order that includes both a TIF instruction of Day and a Short Sale instruction that cannot be executed because of the existence of a Short Sale Restriction, will also be posted and displayed by the System to the EDGX Book and priced in accordance with the Short Sale Price Sliding instruction described in proposed Rule 11.5(l)(2).

Market Orders are only eligible for execution by the System during the Regular Session.

A Market Order may include a Book Only instruction. Except as described above with respect to re-pricing of a Market Order where the NBO (NBB) is greater (less) than the Upper (Lower) Price Band, a Market Order that includes a Book Only instruction will be cancelled if, when entered into the System, it cannot be executed in accordance with proposed Rule 11.10(a)(4). Except for a Market Order that includes a Destination-on-Open instruction, any portion of a Market Order that would execute at a price more than the greater of $0.50 or 5 percent worse than the consolidated last sale as published by the responsible single plan processor at the time the order is entered into the System, will be cancelled. A Market Order that does not include a Book Only instruction, or a TIF instruction of IOC or FOK, and cannot be executed by the System in accordance with proposed renumbered Rule 11.10(a)(4) will be eligible for routing to a Trading Center pursuant to proposed Rule 11.11.

Operation of Market Order With a Book Only Instruction

The below examples demonstrate the functionality of a Market Order that is entered with a Book Only instruction.

Example No. 1. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.02. A Market Order with a Book Only instruction to buy 100 shares is entered into the System and executes against the $10.02 offer displayed by the System on the EDGX Book.

Example No. 2. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.02. An order with a Non-Displayed instruction to sell priced at the midpoint of the NBBO of $10.015 is resting on the EDGX Book. A Market Order with a Book Only instruction to buy 100 shares is entered into the System and executes against the order with a Non-Displayed instruction to sell at $10.015.

Example No. 3. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.03 and no better priced orders with a Non-Displayed instruction are resting on the EDGX Book. A Market Order with a Book Only instruction to buy 100 shares is entered into the System but is cancelled back to the User because the order is not routable and the NBO is displayed only on an away Trading Center.

[59] Current Exchange Rule 11.9(a)(3)(A) states, ''[w]here a non-routable buy (sell) Market Order is entered into the System and the NBB (NBO) is greater (less) than to the Upper (Lower) Price Band, such order will be posted to the EDGX Book or executed, unless (i) the order is an IOC Order, in which case it will be cancelled if not executed, or (ii) the User has entered instructions to cancel the order.'' *See also* Securities Exchange Act Release No. 69003 (February 27, 2013), 78 FR 14380 (March 5, 2013) (SR–EDGX–2013–08).

Limit Orders (Rule 11.8(b))

Exchange Rule 11.5(a)(1) defines a Limit Order as, ''[a]n order to buy or sell a stated amount of a security at a specified price or better'' and a ''marketable'' Limit Order as a ''Limit Order to buy (sell) at or above (below) the lowest (highest) Protected Offer (Protected Bid) for the security.'' The Exchange proposes to relocate these definitions without modification to proposed Rule 11.8(b). Proposed Rule 11.8(b) would further describe a Limit Order's functionality and which instructions are available to Users when entering a Limit Order. Rule 11.8(b) would also describe the re-pricing instructions for Limit Orders available to Users seeking to comply with Rule 610 of Regulation NMS and Rule 201 of Regulation SHO.

First, proposed Rule 11.8(b) will describe how a Limit Order may include a ''Stop Limit Price''. An order with a Stop Limit Price will convert to a Limit Order once the Stop Limit Price is triggered. A Limit Order to buy with a Stop Limit Price becomes eligible for execution by the System when the consolidated last sale in the security occurs at, or above, the specified Stop Limit Price. A Limit Order to sell with a Stop Limit Price becomes eligible for execution when the consolidated last sale in the security occurs at, or below, the specified Stop Limit Price. This functionality is currently described in the Exchange's rules as a Stop Limit Order under Rule 11.5(c)(12). The Exchange believes that a Stop Limit Order is more appropriately described as an order instruction for a Limit Order, rather than a stand-alone order type. Therefore, the Exchange proposes to delete the term Stop Limit Order and replace it with the description of the Stop Limit Price functionality in proposed Rule 11.8(b)(1). The proposed description of a Stop Limit Price will remain the same as the current definition of Stop Limit Order.

Proposed Rule 11.8(b)(2) would state that a Limit Order must have one of the following TIF instructions: IOC, FOK, Day or GTT and that unless otherwise instructed by the User, the System will automatically default a Limit Order to a TIF instruction of Day.

A Limit Order may be an Odd Lot, Round Lot or Mixed Lot. A User may include a Minimum Execution Quantity instruction only for Limit Orders that also include a Non-Displayed instruction. A Limit Order is eligible for execution during the Pre-Opening Session, Regular Session and the Post-Closing Session.

A Limit Order will default to a Displayed instruction unless the User includes a Non-Displayed instruction on the order, or a portion thereof. A Limit Order with a Displayed instruction will default to a Non-Attributable instruction unless the User selects the Attributable instruction. Unless the order is re-priced in accordance with proposed Rule 11.8(b)(13), a Limit Order that includes a Non-Displayed instruction is ranked based on the specified limit price at the time the order is entered into the System in accordance with proposed Rule 11.9(a)(2)(A) and is available for potential execution in the System against incoming orders in accordance with proposed Rule 11.10(a)(4)(A)–(B). A Limit Order with a Displayed instruction may also include a Reserve Quantity. A Limit Order with both a Displayed instruction and Reserve Quantity must include a replenishment amount. Unless the User selects the Random Replenishment instruction, the System will automatically default the order to a Fixed Replenishment instruction with a replenishment value equal to the displayed quantity of the order.

A Limit Order may include a Post Only or Book Only instruction. Unless a Limit Order includes a Post Only or Book Only instruction, proposed Rule 11.8(b)(7) would specify that a marketable Limit Order would be eligible to be routed to a Trading Center pursuant to current Rule 11.9(b) (proposed to be renumbered as Rule 11.11). In such case, the routable, marketable Limit Order may include a Destination Specified, or a Destination-on-Open instruction. A Limit Order may also include an Aggressive or Super Aggressive instruction.

Limit Orders that include a TIF instruction of Day or GTT (''Eligible Limit Orders'') may include a Discretionary Range or Pegged instruction (e.g., Market Peg or Primary Peg). A Limit Order that includes a Pegged instruction is not eligible to be routed to another Trading Center in accordance with proposed renumbered Rule 11.11.

Proposed Rules 11.8(b)(10) and (11) would also describe the various re-pricing instructions a User may attach to an Eligible Limit Order to comply with Rule 610 of Regulation NMS or Rule 201 of Regulation SHO. The operation of these re-pricing instructions is explained in detail above.[60] Proposed Rules 11.8(b)(10) and (11) would explain which re-pricing instructions the System may default to absent a selection by the User. The Rule would also state that a User may elect to Cancel Back the order should its display by the System on the EDGX Book or execution by the System trigger the application of a re-pricing instruction.

First, Eligible Limit Orders are subject to one of the three re-pricing instructions the Exchange offers to comply with Rule 610 of Regulation NMS. A Limit Order that, if displayed at its limit price at the time of entry into the System, would become a Locking Quotation or Crossing Quotation will be automatically defaulted by the System to the Price Adjust instruction, unless the User affirmatively elects the Cancel Back instruction, the Hide Not Slide instruction or the Single Re-Price instruction. A Limit Order to buy (sell) with a limit price that would be a Crossing Quotation at the time of entry will not execute at a price that is higher (lower) than the Locking Price.

Second, should a Short Sale Circuit Breaker be in effect, an Eligible Limit Order may also be subject to one of the three re-pricing instructions the Exchange offers to comply with Rule 201 of Regulation SHO. Proposed Rule 11.8(b)(11) would state that a Limit Order that includes a Short Sale instruction and that is not marked Short Exempt and that cannot be executed in the System or displayed by the System on the EDGX Book at its limit price at the time of entry into the System because a Short Sale Circuit Breaker is in effect, will be automatically defaulted by the System to the Short Sale Price Adjust instruction, unless the User affirmatively elects the Cancel Back instruction, the Short Sale Price Sliding instruction or the Short Sale Single Re-Price instruction.

Third, when a Limit Order, or a portion thereof, is returned to the Exchange after being routed away in accordance with Rule 11.11, and, if displayed by the System on the EDGX Book at its limit price it would become a Locking Quotation or Crossing Quotation, such Limit Order will be automatically defaulted by the System to the Routed and Returned Re-Pricing instruction, unless the User affirmatively elects the Cancel Back instruction, the Price Adjust instruction, Hide Not Slide instruction, or the Single Re-Price instruction.

Lastly, proposed Rule 11.8(b)(13) would state that a Limit Order with a Non-Displayed instruction and a limit price that is better than the midpoint of the NBBO will be ranked by the System at the midpoint of the NBBO with discretion to execute to its limit price in accordance with the Re-Pricing of Orders with a Non-Displayed

[60] *See supra* notes 33 to 46 and accompanying text.

instruction under proposed Rule 11.6(l)(3). However, a User may affirmatively elect that a Limit Order to buy (sell) with a Non-Displayed instruction not be ranked at the midpoint of the NBBO and Cancel Back when the order's limit price is greater (less) than the NBO (NBB).

The below examples describe the functionality of a Limit Order with various instructions under various circumstances.

Operation of Marketable Limit Order With a Book Only Instruction

Example No. 1. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.02. A Limit Order with a Book Only instruction to buy is entered into the System with a limit price of $10.02 and is executed against the $10.02 offer that is resting on the EDGX Book.

Example No. 2. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.02. An order with a Non-Displayed instruction priced at the midpoint of the NBBO of $10.015 to sell is resting on the EDGX Book. A Limit Order with a Book Only instruction to buy is entered into the System with a limit price of $10.02 and is executed against the order with a Non-Displayed instruction to sell at $10.015.

Operation of Limit Order With a Book Only Instruction Entered With a Limit Price That Equals the Locking Price

The following information applies to each of the scenarios listed below.

Example. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $9.99 × $10.03. A Limit Order with a Book Only instruction to buy is entered into the System with a limit price of $10.02.[61]

No Re-Pricing Instruction Elected by User—Defaults to Price Adjust Instruction

Scenario No. 1. Assume the facts from the example above and that the order defaults to the Price Adjust process because an alternate re-pricing instruction is not elected. The Limit Order is displayed and ranked by the System on the EDGX Book at $10.01, one Minimum Price Variation below the Locking Price. The Exchange's BBO is now $10.01 × $10.03. The Limit Order may be re-ranked and displayed at the Locking Price with a new time stamp in response to changes in the NBBO.

User Elects Hide Not Slide Instruction

Scenario No. 2. Assume the facts from the example above and that the User elects the Hide Not Slide instruction. The Limit Order is displayed by the System on the EDGX Book at $10.01, one Minimum Price Variation below the Locking Price, and is ranked by the System at the midpoint of the NBBO, with discretion to trade at the Locking Price. The Exchange's BBO is now $10.01 × $10.03. The Limit Order may be re-ranked and displayed at the Locking Price with a new time stamp in response to changes in the NBBO.

User Elects Single Re-Price Instruction

Scenario No. 3. Assume the facts from the example above and that the User elects the Single Re-Price instruction. The Limit Order is displayed and ranked by the System on the EDGX Book at $10.01, one Minimum Price Variation below the Locking Price. The Exchange's BBO is now $10.01 × $10.03. The Limit Order is not subject to further adjustments in response to changes in the NBBO.

The Exchange's BBO Joins NBO

The following information applies to each of the scenarios listed below.

Example. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $10.01 × $10.03. The EDGX Book contains the following buy orders, ranked in time order:

Buyer One: $10.02 Book Only/Price Adjust instruction/displayed and ranked at $10.01

Buyer Two: $10.02 Book Only/Single Re-Price instruction/displayed and ranked at $10.01

Buyer Three: $10.02 Book Only/Hide Not Slide instruction/displayed at $10.01 and ranked at $10.015 with discretion to trade to $10.02

Scenario 1. Assume that Seller One enters a Limit Order with a Post Only and Displayed instruction to sell at $10.02. Seller One's order cannot remove liquidity so it does not execute in the System against Buyer Three's buy order. Rather, it is displayed by the System on the EDGX Book at $10.02. The Exchange's BBO narrows to $10.01 × $10.02. Buyer Three's discretion to execute up to $10.02 is suspended to prevent later arriving sell orders priced at $10.02 from violating Seller One's time priority at that price.

Scenario 2. Assume the facts from above and that Seller Two enters a Limit Order to sell at $10.02. This order does not execute against Buyer Three because Buyer Three's discretion to execute up to $10.02 is suspended because a contra-side order to sell at $10.02 is displayed on the EDGX Book. Seller Two's offer is posted by the System to the EDGX Book and joins the offer at $10.02 behind Seller One.

Scenario 3. Assume the facts from above and next that Seller One cancels its order. Buyer Three's discretion to execute up to $10.02 remains suspended because a contra-side order to sell at $10.02 from Seller 2 remains displayed on the EDGX Book. Seller Two does not execute against Buyer Three because Buyer Three's discretion to execute up to $10.02 is suspended.

Scenario 4. Assume the facts from above and next that Seller Three enters a Limit Order to sell at $10.02. Seller Three does not execute against Buyer Three because Buyer's Three's discretion to execute up to $10.02 remains suspended. Seller Three's order is posted by the System to the EDGX Book at $10.02 behind Seller Two.

Operation of Limit Orders With Displayed and Post Only Instructions

The following information applies to each of the scenarios listed below.

Example No. 1. Assume the NBBO is $10.01 × $10.02 and the Exchange's BBO is $10.01 × $10.02.

Scenario No. 1. Buyer One enters a Limit Order with a Displayed and Post Only instruction at $10.02. Buyer One's order will not execute at $10.02 because an order with a Post Only instruction will not remove liquidity from the EDGX Book at its limit price. If Buyer One's Limit Order is subject to the Hide Not Slide instruction, it will be displayed by the System on the EDGX Book at $10.01, ranked by the System at $10.015, the midpoint of the NBBO, with discretion to trade at $10.02. If Buyer One's Limit Order is subject to either the Price Adjust or Single Re-Price instructions, it will not execute and will be displayed and ranked by the System on the EDGX Book at $10.01.

Scenario No. 2. Assume that there is an order with a Non-Displayed instruction to sell at $10.015 resting on EDGX Book. Buyer One's Limit Order, if subject to the Hide Not Slide instruction, will execute against an order with a Non-Displayed instruction to sell at $10.015 because Buyer One's Limit Order will receive an execution between the NBBO better than the order's limit price. If Buyer One's Limit Order is subject to either the Price Adjust or Single Re-Price instructions, it will not execute and will be displayed and ranked by the System on the EDGX Book at $10.01.

Scenario No. 3. Assume that Buyer One instead enters a Limit Order with a Displayed and Post Only instruction at $10.03. If Buyer One's order contains a Hide Not Slide instruction no execution occurs, since there are no contra-side orders to provide an execution between the NBBO better than its limit price. The order will be displayed at $10.01 and ranked at $10.015 with discretion to execute at $10.02. If Buyer One's order contains either a Price Adjust or a Single Re-Price instruction, no execution occurs, and the order will be displayed and ranked at $10.01.

Example No. 2. For the following scenarios, assume the NBBO upon order entry is $10.01 × $10.02. Unless otherwise specified, further assume that all Limit Orders with a Displayed and Post Only instruction are Limit Orders to buy.

[61] The Limit Order does not execute in the System because the NBO is displayed on an away Trading Center and the Limit Order is not eligible to be routed away. The Limit Order is also not displayed by the System on the EDGX Book at its limit price because if it did it would be a Locking Quotation. The User may elect that the Limit Order immediately Cancel Back; otherwise, the Limit Order will be eligible for one of the three re-pricing instructions the Exchange offers to comply with Rule 610 of Regulation NMS. The Limit Order will be automatically defaulted by the System to the Price Adjust instruction unless the User affirmatively elects the Hide Not Slide instruction, the Single Re-Price instruction, or Cancel Back.

Scenario No. 1. The Exchange BBO is $9.99 × $10.03. A Limit Order to buy at $10.00 is entered into the System. The order is posted by the System to the EDGX Book at $10.00. The order does not change the NBB; but improves the Exchange BBO to $10.00 × $10.03.

Scenario No. 2. The Exchange BBO is $9.99 × $10.03. A Limit Order to buy at $10.02 is entered into the System. If the buy order was displayed by the System on the EDGX Book at its limit price, it would lock the NBO at $10.02 and, hence, be considered a Locking Quotation. To avoid being a Locking Quotation, the order defaults to the Price Adjust instruction because the User did not select either the Cancel Back, Hide Not Slide, or Single Re-Price instructions. The order is ranked and displayed by the System on the EDGX Book at $10.01.

Scenario No. 3. The Exchange BBO is $9.99 × $10.03. A Limit Order to buy at $10.02 is entered into the System and the User elects the Single Re-Price instruction. If displayed by the System on the EDGX Book at its limit price, the order would lock the NBO at $10.02 and, hence, be considered a Locking Quotation. To avoid being a Locking Quotation, the order is ranked and displayed by the System on the EDGX Book at $10.01 with no further price adjustments.

Scenario No. 4. The Exchange BBO is $9.99 × $10.03. A Limit Order to buy at $10.02 is entered into the System and the User elects that the order Cancel Back should it become a Locking Quotation or Crossing Quotation. If displayed on the EDGX Book at its limit price, the order would lock the NBO at $10.02 and, hence, be considered a Locking Quotation. The order is immediately canceled pursuant to the User's instructions.

Scenario No. 5. The Exchange BBO is $9.99 × $10.03. A buy order priced at $10.02 is entered into the System and the User elects the Hide Not Slide instruction. If displayed on the EDGX Book at its limit price, the order would lock the NBO at $10.02 and, hence, be considered a Locking Quotation. To avoid being a Locking Quotation, the order is displayed by the System on the EDGX Book at $10.01, and ranked by the System at $10.015, with discretion to buy up to $10.02.

Other Examples

The following information applies to each of the scenarios listed below.

Example. Assume the NBBO is $10.00 × $10.01 and the Exchange's BBO is $10.00 × $10.02. The following buy orders are resting on the EDGX Book ranked in order of time of arrival:

Buyer One: $10.01 × 100 Book Only/Price Adjust instruction/displayed and ranked by the System on the EDGX Book at $10.00.

Buyer Two: $10.01 × 100 Book Only/Single Re-price instruction/displayed and ranked by the System on the EDGX Book at $10.00.

Buyer Three: $10.01 × 100 Book Only/Hide Not Slide instruction/displayed by the System on the EDGX Book at $10.00 and ranked by the System at $10.005 with discretion to trade to $10.01

Scenario No. 1. Seller One enters into the System a Limit Order to sell 100 shares with a Post Only instruction at $10.01. Seller One's order will be posted by the System to the EDGX Book at $10.01, updating the Exchange's BBO to $10.00 × $10.01. Buyer Three's discretion to execute up to $10.01 is suspended because a contra-side order to sell 100 shares at $10.01 is now displayed by the System on the EDGX Book. Seller Two enters a Limit Order to sell 100 shares at $10.01. Seller Two's order may not execute in the System against Buyer Three's order because Seller One currently has priority at that price. Accordingly, Seller Two's order will be posted by the System to the EDGX Book at $10.01 and ranked by the System behind Seller One. Seller One cancels its order. Seller Two's order is now the Exchange's best offer at $10.01. Seller Two's order would remain on the EDGX Book and not execute against Buyer Three's order—Buyer Three's discretion to execute up to $10.01 continues to be suspended because a contra-side order to sell 100 shares at $10.01 is displayed by the System on the EDGX Book.

Scenario No. 2. Assume that Seller One instead enters into the System a Limit Order to sell 100 shares at $10.01 without a Post Only instruction. Seller One's order executes against Buyer Three's order at $10.01.

Scenario No. 3. Assume that Seller One instead enters into the System a Limit Order to sell 500 shares at $10.00. Seller One's order executes 100 shares against Buyer Three's order at $10.005, and then executes 100 shares against Buyer One's order at $10.00, and lastly, executes 100 shares against Buyer Two's order at $10.00. The remaining 200 shares of Seller One's order are routed in accordance with proposed renumbered Rule 11.11.

Scenario No. 4. Assume that Seller One instead enters into the System a Limit Order to sell 500 shares with a Book Only instruction at $10.00. Seller One's order executes 100 shares against Buyer Three's order at $10.005, and then executes 100 shares against Buyer One's order at $10.00, and lastly, executes 100 shares against Buyer Two's order at $10.00. The remaining 200 shares of Seller One's order are subject to the Price Adjust instruction and are, therefore, ranked and displayed by the System on the EDGX Book at $10.01.

Scenario No. 5. Assume instead that prior to any contra-side sell order being entered into the System, the NBBO updates to $10.00 × $10.02. Buyer One's order is ranked and displayed by the System on the EDGX Book at $10.01, and it, along with Buyer Three, establish a new NBB. Buyer Three's order has execution priority ahead of Buyer One's order.[62] Buyer Two's order remains ranked and displayed by the System at $10.00. The NBBO is now $10.01 × $10.02. Seller One enters into the System a Limit Order to sell 100 shares at $10.01. Seller One's order is executed against Buyer Three's order at $10.01.

Scenario No. 6. Assume instead that prior to any contra-side sell order being entered into the System Buyer Four enters into the System an ISO with a TIF instruction of Day to buy 100 shares at $10.01. Buyer Four's order is displayed by the System on the EDGX Book at $10.01.[63] Buyer Three's order is then also displayed by the System on the EDGX Book at $10.01 behind Buyer Four's order. Buyer One's order is also displayed by the System on the EDGX Book at $10.01, behind Buyer Three's order and Buyer Four's order. Buyer Two's order remains ranked and displayed by the System at $10.00. Seller One enters into the System a Limit Order to sell 200 shares at $10.01. Seller One's order executes 100 shares against Buyer Four's order at $10.01, then executes 100 shares against Buyer Three's order at $10.01.

Scenario No. 7. Assume instead that prior to any contra-side sell order being entered into the System Buyer Four enters into the System a Mid-Point Match Order to buy with a Limit Price of $10.01, which is ranked at $10.005. Buyer Five then enters a Limit Order to buy 100 shares at $10.01 utilizing the Hide Not Slide instruction that is displayed by the System on the EDGX Book at $10.00 and ranked by the System to $10.005 with discretion to trade to $10.01. The buy orders resting on the EDGX Book are ranked as follows: (i) Buyer Three's order at $10.005 with discretion to execute to $10.01 (i.e., the Locking Price); (ii) Buyer Five's order at $10.005 with discretion to execute to $10.01 (i.e., the Locking Price); (iii) Buyer Four's MidPoint Match Order at $10.005 (i.e., the midpoint of the NBBO); (iv) Buyer One's order at $10.00; and (v) Buyer Two's order at $10.00.

Scenario 8. Assume the facts from Scenario 7 above and that Seller One now enters into the System a Limit Order to sell 500 shares at $10.00. Seller One's order first executes 100 shares against Buyer Three's order at $10.005, then executes 100 shares against Buyer Four's order at $10.005, then executes 100 shares against Buyer Five's order at $10.005, then executes 100 shares against Buyer One's order at $10.00, and lastly, executes 100 shares against Buyer Two's order at $10.00.

[62] As described in more detail below, under proposed Rule 11.9(a)(2)(C), where such an order is re-ranked to the Locking Price after a Locking Quotation clears, the System will re-rank and display such orders at the Locking Price in time priority in the following order: (i) ISO with a TIF instruction of Day that establishes a new NBBO at the Locking Price; (ii) Limit Orders to which the Hide Not Slide or Routed And Returned Re-Pricing instruction has been applied; (iii) Limit Orders to which the Price Adjust instruction has been applied; and (iv) orders with a Pegged instruction. *See infra* section entitled ''*Orders Re-Ranked upon Clearance of a Locking Quotation*''.

[63] Buyer Four's order may be posted to the EDGX Book under proposed Rule 11.8(c)(4), which states that a User entering an ISO with TIF instruction of Day represents that such User has simultaneously routed one or more additional limit orders marked ISO, if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is superior or equal to the limit price of the ISO entered in the System. This is consistent with the ISO exception under the Exchange Rule 11.10(f), which requires that ISOs be routed to execute against all protected quotations with a price that is *better than or equal* to the display price, rather than solely to protected quotations for a security with a price that is superior to the ISO's limit price. *See also* Question 5.02 in the Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

ISO (Rule 11.8(c))

Proposed Rule 11.8(c) would define an ISO as it is currently defined in Rule 11.5(d)(1), but would also include additional language to describe which instructions may be attached to an ISO and how the System will treat such orders. Just as in Rule 11.5(d)(1), proposed Rule 11.8(c) will continue to state that the System will accept incoming ISOs (as such term is defined in Regulation NMS) and that ''[t]o be eligible for treatment as an ISO, the order must be: (i) A Limit Order; (ii) marked ISO; and (iii) the User entering the order must simultaneously route one or more additional Limit Orders marked ISO, if necessary, to away markets to execute against the full displayed size of any Protected Quotation for the security with a price that is superior to the limit price of the ISO entered in the System. Such orders, if they meet the requirements of the foregoing sentence, may be executed at one or multiple price levels in the System without regard to Protected Quotations at away Trading Centers consistent with Regulation NMS (i.e., may trade through such quotations).''

Like current Rule 11.5(d)(1), proposed Rule 11.8(c) would continue to make clear to Members that the Exchange relies on the marking of an order as an ISO when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to ISOs.

Proposed Rule 11.8(c)(4) provides that incoming ISOs may be submitted during the Pre-Opening Session, Regular Session and the Post-Closing Session. Proposed Rule 11.8(c)(1)–(4) would also state that an incoming ISO will have a default TIF instruction of Day, unless the User selects a TIF instruction of GTT or IOC. Incoming ISOs cannot include a TIF instruction of FOK. An ISO with a Post Only and TIF instruction of GTT or Day will be rejected without execution if, when entered, it is immediately marketable against an order with a Displayed instruction resting on the EDGX Book, unless the User included on the ISO a Price Adjust, Hide Not Slide, or the Single Re-Price instruction. The rule would also state that a User entering an ISO with TIF instruction of Day represents that such User has simultaneously routed one or more additional limit orders marked ISO, if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is superior or equal to the limit price of the ISO entered in the System.[64] Any unfilled portion of an ISO with a TIF instruction of GTT or Day will be posted by the System to the EDGX Book at the ISO's limit price.

Similar to proposed Rule 11.8(b) on Limit Orders, proposed Rule 11.8(c) would also describe the various re-pricing instructions a User may attach to an ISO to comply with Rule 610 of Regulation NMS or Rule 201 of Regulation SHO where the ISO includes a Post Only and TIF instruction of GTT or Day. An ISO with a TIF instruction of GTT or Day as well as a Short Sale instruction that cannot be executed or displayed by the System at its limit price at the time of entry into the System because of the existence of a Short Sale Circuit Breaker, will be automatically defaulted by the System to the Short Sale Price Adjust instruction, unless the User affirmatively elects the Cancel Back instruction, the Short Sale Price Sliding instruction or the Short Sale Single Re-Price instruction.

Inbound ISOs are not eligible for routing pursuant to Rule 11.9(b) (proposed to be renumbered as Rule 11.11). However, proposed Rule 11.8(c) would permit a User to attach an instruction to an ISO that would allow the ISO to bypass the System and be immediately routed by the Exchange as an outbound ISO to an away Trading Center specified by the User for execution. It is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to ISOs. The Exchange notes that this functionality is currently provided for under Exchange Rule 11.5(d)(2) as a ''Direct Intermarket Sweep Order'' (''Directed ISO''). The Exchange proposes to no longer classify a Directed ISO as a standalone order type because it believes the functionality of a Directed ISO is more indicative of an instruction a User may attach to an ISO directing the System to route the order to a specified Trading Center, rather than a standalone order type.

MidPoint Match (''MPM'') Order (Rule 11.8(d))

Exchange Rule 11.5(c)(7) currently defines an MPM Order as ''[a]n order with an instruction to execute it at the midpoint of the NBBO.'' The Exchange proposes to move the description of the functionality of an MPM Order into proposed Rule 11.8(d) and to include additional language describing and outlining the instructions that may be included with an MPM Order. The Exchange also proposes to amend the definition to expressly state that an MPM Order may be a Market Order or a Limit Order. However, proposed Rule 11.8(d) makes clear that notwithstanding that an MPM Order may be a Market Order or a Limit Order, as set forth in proposed Rules 11.8(a) and 11.8(b), respectively, the operation of and available instructions applicable to an MPM Order are limited to those contained in proposed Rule 11.8(d).

Like current Rule 11.5(c)(7), proposed Rule 11.8(d) would state that an MPM Limit Order may only contain the following TIF instructions: Day, FOK, IOC, or GTT. Any unexecuted portion of an MPM Limit Order with a Day or GTT instruction that is resting on the EDGX Book will receive a new time stamp each time it is re-priced by the System in response to changes in the midpoint of the NBBO.

An MPM order may include a limit price that would specify the highest or lowest prices at which the MPM Order to buy or sell would be eligible to be executed. For example, if an MPM Order to buy is entered with a limit price that is less than the prevailing mid-point of the NBBO it would not be eligible to execute at the mid-point of the NBBO. An MPM Order to buy with a limit price that is greater than the prevailing NBBO would be able to execute at the mid-point of the NBBO and not at its limit price. As stated above, an MPM order entered with a limit price less aggressive than the mid-point of the NBBO will be given a new time stamp when its limit price becomes equal to or more aggressive than the mid-point of the NBBO because a new mid-point is established.

Proposed Rule 11.8(d) would also state that an MPM Order may only be entered as a Round Lot or a Mixed Lot. A User may include a Minimum Execution Quantity instruction on an MPM Order. MPM Orders are not eligible for routing pursuant to Rule 11.9(b)(1) (proposed to be renumbered as Rule 11.11). The rule would also state that an MPM Order is not eligible for

[64] The operation of an ISO with a TIF instruction of Day is similar to the Post ISO order on the National Stock Exchange, Inc. (''NSX''), but for the NSX stating that it will reject a Post ISO if it is immediately marketable against a displayed order on the NSX Book, while the Exchange retains such orders where they include a Price Adjust, Hide Not Slide, or Single Re-Price instruction. *See* NSX Rule 11.11(c)(8)(ii). The ISO exception under Exchange Rule 11.10(f) requires that ISOs be routed to execute against all protected quotations with a price that is better than or equal the display price, rather than solely to protected quotations for a security with a price that is superior to the ISO's limit price. *See* Question 5.02 in the Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

execution when a Locking Quotation or Crossing Quotation exists. In such case, an MPM Order would rest on the EDGX Book and would not be eligible for execution in the System until the a Locking Quotation or Crossing Quotation no longer exists. The MPM order will receive a new time stamp when a Locking Quotation or Crossing Quotation no longer exists and a new midpoint of the NBBO is established. In such case, pursuant to Rule 11.9, all MPM orders that are re-ranked at the midpoint of the NBBO will retain their priority as compared to each other based upon the time such orders were initially received by the System. MPM Orders are defaulted by the System to a Non-Displayed instruction. MPM Orders are not eligible to include a Displayed instruction. MPM Orders may only be executed during the Regular Session.

The Exchange proposes to amend the definition of MPM Orders to state that they are eligible for participation in the Opening Process, but are not eligible for participation in the Pre-Opening Session, Post-Closing Session, or the Contingent Open as set forth in proposed rule 11.7(d) above. The rationale for this amendment is that an NBBO may not be calculated during the Pre-Opening and Post-Closing Sessions from which to derive the midpoint. Even if there is an NBBO disseminated during these sessions, the Exchange believes that the midpoint of such NBBO might not reflect the true market for the security due to the decreased liquidity during these sessions. In the event of a Contingent Open as described in Rule 11.7(d), an MPM Order will not be eligible to trade during the Regular Session until the conditions set forth under Rule 11.7(c) for determining the price of the Opening Transaction have been met.

MPM Orders will not trade with any other orders when the midpoint of the NBBO is below the Lower Price Band or above the Upper Price Band. MPM Orders will continue to execute at the midpoint of the NBBO as long as the execution price is between the Lower and Upper Price Bands.

NBBO Offset Peg Order (Rule 11.8(e))

The Exchange currently defines and explains the functionality of the NBBO Peg Offset Order in Rule 11.5(c)(15).[65] The Exchange proposes to renumber current Rule 11.15(c)(15) as proposed Rule 11.8(e) but does not propose to amend the functionality of the NBBO Offset Peg Order. However, the Rule will be reformatted to be consistent with the Exchange's description of other order types to clearly delineate the various aspects of the NBBO Offset Peg Order. The NBBO Offset Peg Order would continue to be defined as ''[a] Limit Order that, upon entry, is automatically priced by the System at the Designated Percentage (as defined in Rule 11.21(d)(2)(D) (proposed to be renumbered as Rule 11.20(d)(2)(D)) away from the then current NBB (in the case of an order to buy) or NBO (in the case of an order to sell), or if there is no NBB or NBO at such time, at the Designated Percentage away from the last reported sale from the responsible single plan processor.'' Notwithstanding that a NBBO Offset Peg Order is also considered a Limit Order, as set forth in proposed Rule 11.8(b), its operation and available instructions would be limited to those contained in proposed Rule 11.8(e); proposed Rule 11.8(b) regarding Limit Orders would not apply to NBBO Offset Peg Orders.

Upon reaching the Defined Limit (as defined in Rule 11.21(d)(2)(F) (proposed to be renumbered as Rule 11.20(d)(2)(F)), the price of an NBBO Offset Peg Order bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there is no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If an NBBO Offset Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage toward the then current NBB or NBO, the price of such bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO. If there is no NBB or NBO at such time, the order will be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected.

In the absence of an NBB or NBO and last sale reported by the responsible single plan processor, the order will be cancelled or rejected. If, after entry into the System, the NBBO Offset Peg Order is priced based on the last sale reported by the responsible single plan processor and such NBBO Offset Peg Order is established as the NBB or NBO, the NBBO Offset Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new last sale reported by the responsible single plan processor, or a new NBB or new NBO is established by a national securities exchange. NBBO Offset Peg Orders may only include a TIF instruction of Day. NBBO Offset Peg Orders may only be entered as a Round Lot or Mixed Lot. NBBO Offset Peg Orders are defaulted by the System to a Displayed instruction. NBBO Offset Peg Orders are not eligible to include a Non-Displayed instruction. Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session, but such orders are not executable or automatically priced until after the first regular way last sale on the relevant listing exchange for the security, as reported by the responsible single plan processor. The order expires at the end of the Regular Session.

NBBO Offset Peg Orders are not eligible for routing pursuant to Rule 11.9(b) (proposed to be renumbered as Rule 11.11). When a Crossing Quotation exists, an NBBO Peg Offset Order will be automatically priced by the System at the Designated Percentage (as defined in Rule 11.21(d)(2)(D) (proposed to be renumbered as Rule 11.20(d)(2)(D)) away from the then current NBO (in the case of an order to buy) or NBB (in the case of an order to sell). Notwithstanding the availability of the NBBO Offset Peg Order functionality, a User acting as a Market Maker remains responsible for entering, monitoring, and re-submitting, as applicable, quotations that meet the requirements of Rule 11.21(d) (proposed to be renumbered as Rule 11.20(d)). An NBBO Offset Peg Order will receive a new time stamp each time it is re-priced in response to changes in the NBB, NBO, or last reported sale.

Route Peg Order (Rule 11.8(f))

The Exchange currently defines and explains the functionality of the Route Peg Order under Rule 11.5(c)(17).[66] The

[65] *See* Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR–EDGX–2012–44) (notice of filing and immediate effectiveness of the proposal to adopt the NBBO Offset Peg Order) (''EDGX Adopting Release''); Securities Exchange Act Release No. 68596 (January 7, 2013), 78 FR 2477 (January 11, 2013) (SR–EDGX–2012–49) (notice of filing and immediate effectiveness to amend the NBBO Offset Peg Order); and Securities Exchange Act Release No. 69875 (June 27, 2013), 78 FR 40227 (July 3, 2013) (notice of filing and immediate effectiveness to amend the NBBO Offset Peg Order).

[66] *See* Securities Exchange Act Release No. 67727 (August 24, 2012), 77 FR 52773 (August 30, 2012)

Exchange proposes to renumber Rule 11.15(c)(17) as Rule 11.8(f) but does not propose to amend the functionality of the Route Peg Order. However, the Rule would be reformatted to be consistent with the Exchange's description of other order types to clearly delineate the various aspects of the Route Peg Order. The Route Peg Order would be defined as a non-displayed Limit Order that is eligible for execution at the NBB for a buy order and NBO for a sell order against an order that is in the process of being routed to away Trading Centers with an order size equal to or less than the aggregate size of the Route Peg Order interest available at that price. Route Peg Orders are passive, resting orders on the EDGX Book and do not remove liquidity. A Route Peg Order does not execute at a price that is inferior to a Protected Quotation. Notwithstanding that a Route Peg Order is also Limit Order, as set forth in proposed Rule 11.8(b), its operation and available instructions would be limited to those contained in proposed Rule 11.8(f).

Proposed Rule 11.8(f) would delineate various aspects of the Route Peg Order. Rule 11.8(f) would make clear that a Route Peg Order may only have a TIF instruction of GTT or Day. Route Peg Orders are not eligible to include a TIF instruction of IOC or FOK. Route Peg Orders may be Round Lots, or Mixed Lots. Route Peg Orders are defaulted by the System to a Non-Displayed instruction. Route Peg Orders are not eligible to include a Displayed instruction. A User may specify a Minimum Execution Quantity instruction for a Route Peg Order. Route Peg Orders may be entered, cancelled, and cancelled/replaced prior to and during the Regular Session. Route Peg Orders are only eligible for execution in a given security during the Regular Session, except that, even after the commencement of the Regular Session, Route Peg Orders are not eligible for execution: (i) In the Opening Session; and (ii) until such time that orders in that security during the Regular Session can be posted by the System to the EDGX Book. Any and all remaining, unexecuted Route Peg Orders are cancelled at the conclusion of the Regular Session. Route Peg Orders are not eligible for routing pursuant to Rule 11.9(b)(2) (proposed to be renumbered as Rule 11.11). A Route Peg Order is not eligible for execution when a Locking Quotation or Crossing Quotation exists. In such case, a Route Peg Order would rest on the EDGX Book and would not be eligible for execution in the System until a Locking Quotation or Crossing Quotation no longer exists.

Proposed Rule 11.9, Priority

The Exchange proposes to renumber current Rule 11.8, Priority as proposed Rule 11.9 and amend it to: (i) Outline the priority of orders at certain price points; (ii) clarify the priority of Limit Orders with a Reserve Quantity; and (iii) make certain non-substantive, conforming and clarifying changes. The Exchange does not propose to modify the current priority of orders at the same price or the operation of the System. The Exchange simply seeks to further outline current System functionality within the Exchange's Rules. The Exchange believes the proposed amendments will provide Members, Users, and the investing public with greater transparency regarding how the System operates.

Under Rule 11.9(a), orders of Users are first ranked and maintained by the System on the EDGX Book according to their price. Orders at the same price and of the same type are then ranked by the System depending on the time they were entered into the System. The Exchange proposes to amend Rule 11.9 to delineate, consistent with current System functionality, how orders with certain instructions are to be ranked by the System: (i) At a price other than the midpoint of the NBBO; (ii) at the midpoint of the NBBO; and (iii) where buy (sell) orders utilize instructions that cause them to be ranked by the System upon clearance of a Locking Quotation.[67] The Exchange also proposes to clarify that, for purposes of priority under Rule 11.9(a)(2)(A) and (B): (i) An ISO[68] and NBBO Offset Peg Order[69] are to be treated as a Limit Order;[70] and (ii) orders subject to a re-pricing instruction to comply with Rule 201 of Regulation SHO under proposed Rule 11.6(l)(2), including Market Orders that are displayed on the EDGX Book pursuant to proposed Rule 11.8(a)(4)) and proposed re-numbered Rule 11.10(a)(3)(A), maintain the same priority as Limit Orders at that price.

Prices Other Than the Midpoint of the NBBO

Current Rule 11.8(a)(2) states, in sum, that the System shall execute equally priced trading interest in time priority in the following order: (i) Displayed size of limit orders; (ii) MidPoint Match Orders; (iii) Non-displayed limit orders and reserve orders; (iv) Discretionary range of Discretionary Orders as set forth in current Rule 11.5(c)(13); and (v) Route Peg Orders as set forth in current Rule 11.5(c)(17).

The Exchange proposes to amend the above priority to state that it applies to equally priced trading interest at prices other than at the midpoint of the NBBO or where orders are re-ranked at the Locking Price after a Locking Quotation clears. The Exchange also proposes to amend the description of order types under proposed Rules 11.9(a)(2)(A)(i)–(iv) to be consistent with proposed Rule 11.8, Order Types. As amended, proposed Rule 11.9(a)(2)(A) would state that the System will execute equally priced trading interest within the System at prices other than at the midpoint of the NBBO or where orders are re-ranked at the Locking Price after a Locking Quotation clears in time priority in the following order: (i) The portion of a Limit order with a Displayed instruction; (ii) Limit Orders with a Non-Displayed instruction and the Reserve Quantity of Limit Orders; (iii) Limit Orders executed within their Discretionary Range; and (iv) Route Peg Orders.

Operation of Priority at Prices Other Than the Midpoint of the NBBO

Example. Assume the NBBO is $10.01 × $10.02 and the Exchange BBO is $10.01 × $10.02. Also, assume that the displayed and Reserve Quantity of each order have the same time stamp. The EDGX Book contains the following buy orders, ranked in time order:

Buyer One: $10.01 × 100 shares displayed/ Reserve Quantity of 500

Buyer Two: $10.01 × 100 shares non-displayed

Buyer Three: $10.01 × 100 shares displayed/ Reserve Quantity of 500

Seller One enters into the System a Limit Order to sell 1,000 shares at $10.01. Seller One's order first executes 100 shares against the displayed quantity of Buyer One's order at $10.01, then executes 100 shares against the displayed quantity of Buyer Three's order at $10.01, then executes 500 shares against the Reserve Quantity of Buyer One's order at $10.01 (thus completely filling Buyer One's order), then executes 100 shares against Buyer Two's order at $10.01 (thus completely filling Buyer Two's order), and lastly, executes 200 shares against the Reserve Quantity of Buyer Three's order at $10.01. Seller One's order would be completely filled at this point, leaving 300 shares in Reserve Quantity for Buyer Three, which would be replenished and displayed in accordance with Buyer Three's instructions.

At the Midpoint of the NBBO

The Exchange also proposes to outline the priority of orders that are priced at

(SR–EDGX–2012–25) (Order Approving Proposed Rule Change to Amend EDGX Rules to Add the Route Peg Order).

[67] For purposes of priority under proposed Rule 11.9(a)(2)(A), (B) and (C), the Exchange notes that orders of Odd Lot, Round Lot, or Mixed Lot size are treated equally.

[68] *See* proposed Rule 11.8(c).

[69] *See* proposed Rule 11.8(e).

[70] *See* proposed Rule 11.8(b).

the midpoint of the NBBO under proposed Rule 11.9(a)(2)(B). Where orders are priced at the midpoint of the NBBO, the first order priced at the midpoint of the NBBO within each of the categories set forth in paragraphs (i) through (iv) of proposed rule 11.9(a)(2)(B) shall have precedence at the midpoint of the NBBO, up to the number of shares of stock specified in the order. The System shall execute trading interest priced at the midpoint of the NBBO within the System in time priority in the following order: (i) Limit Orders to which the Hide Not Slide or Routed And Returned Re-Pricing instruction has been applied; (ii) MidPoint Match Orders; (iii) Limit Orders with a Non-Displayed instruction; and (iv) Limit Orders executed within their Discretionary Range.

Operation of Priority at the Midpoint of the NBBO

Example. Assume the NBBO is $10.01 × $10.02 and the Exchange BBO is $10.01 × $10.02. The EDGX Book contains the following buy orders, ranked in time order:

Buyer One: $10.02 × 100 shares MidPoint Match/non-displayed and ranked at $10.015, the midpoint of the NBBO

Buyer Two: $10.02 × 100 shares Book Only/Hide Not Slide/displayed at $10.01 and ranked $10.015, the midpoint of the NBBO, with its discretion to $10.02 suspended because a contra-side order to sell at $10.02 is displayed on the EDGX Book.

Seller One enters a Limit Order to sell 200 shares with a limit price of $10.01. Seller One's order first executes 100 shares against Buyer Two's order at $10.015, and then executes 100 shares against Buyer One's order at $10.015.

Orders Re-Ranked Upon Clearance of a Locking Quotation

Order priority also differs where buy (sell) orders utilize instructions that result in their being re-ranked upon clearance of a Locking Quotation. In such case, the System will re-rank and display such orders at the Locking Price. The Exchange proposes to include proposed Rule 11.9(a)(2)(C), which would state that, where such an order is re-ranked to the Locking Price after a Locking Quotation clears, the System will re-rank and display such orders at the Locking Price in time priority in the following order: (i) ISO with a TIF instruction of Day that establishes a new NBBO at the Locking Price; (ii) Limit Orders to which the Hide Not Slide or Routed And Returned Re-Pricing instruction has been applied; (iii) Limit Orders to which the Price Adjust instruction has been applied; and (iv) orders with a Pegged instruction. Orders not executed and remaining on the EDGX Book after being re-ranked upon clearance of the Locking Quotation will be executed in time priority under proposed Rule 11.9(a)(2)(A) described above.

Operation of Priority for Orders Re-Ranked Upon Clearance of a Locking Quotation

Example. Assume the NBBO is 10.01 × 10.02 and the Exchange BBO is 10.01 × 10.03. The EDGX Book contains the following buy orders, ranked in time order:

Buyer One: $10.05 × 100 shares Primary Pegged instruction/displayed and ranked at $10.01

Buyer Two: $10.02 × 100 shares Book Only/Price Adjust instruction/displayed and ranked at $10.01

Buyer Three: $10.02 × 100 shares Book Only/Single Re-Price instruction/displayed and ranked at $10.01

Buyer Four: $10.02 × 100 shares Book Only/Hide Not Slide instruction/displayed at $10.01 and ranked at $10.015 with discretion to $10.02

Buyer Five: $10.03 × 100 shares MidPoint Match/non-displayed at $10.015, the midpoint of the NBBO

Scenario No. 1. Assume the NBO of $10.02 on an away Trading Center is executed or cancelled. As a result, the Exchange is at the NBBO of $10.01 × $10.03. Upon clearance of the Locking Quotation, Buyer Four's order is displayed by the System on the EDGX Book at $10.02 and receives a new time stamp. The Exchange established the new NBBO of $10.02 × $10.03. Buyer Two's order is displayed by the System on the EDGX Book at $10.02 and given a new time stamp behind Buyer Four's order. Buyer One's order is displayed by the System on the EDGX Book at $10.02 and given a new time stamp behind Buyers Four and Two. Buyer Five's order remains non-displayed by the System on the EDGX Book and is ranked at $10.025, the new midpoint of the NBBO, and is provided a new time stamp. Buyer Three's order remains displayed by the System on the EDGX Book at $10.01.

Seller One enters into the System a Limit Order to sell 500 shares at $10.01. Seller One's order is executed as follows: 100 shares against Buyer Five's order at $10.025; 100 shares against Buyer Four's order at $10.02; 100 shares against Buyer Two's order at $10.02; 100 shares against Buyer Five's order at $10.01; and 100 shares against Buyer Three's order at $10.01.

Scenario No. 2. Buyer Six enters into the System an ISO buy order with a limit price of $10.02 and a TIF instruction of Day. Buyer Six's order is displayed by the System on the EDGX Book at $10.02 and locks the NBBO. The Exchange's BBO is now $10.02 × $10.03 and the buy orders will be ranked by the System as follows: Buyer Four's order is now displayed by the System on the EDGX Book at $10.02, receives a new time stamp and is ranked behind Buyer Six. Buyer Two's order is displayed by the System on the EDGX Book at $10.02, receives a new time stamp and is ranked behind Buyers Six and Four. Buyer One's order is displayed by the System on the EDGX book at $10.02, receives a new time stamp and is ranked behind Buyers Six, Four, and Two. The NBBO is updated to $10.02 × $10.02 resulting in a locked market. Buyer Two's order remains displayed by the System on the EDGX Book at $10.01. Buyer Five's order is not executable because the NBBO is locked and Mid-Point Match Orders are not eligible for execution during a locked market.

Seller One enters into the System a Limit Order to sell 500 shares at $10.01 and it is executed as follows: 100 shares against Buyer Six's order at $10.02; 100 shares against Buyer Four's order at $10.02; 100 shares against Buyer Two's order at $10.02; 100 shares against Buyer One's order at $10.01; and 100 shares against Buyer Three's order at $10.01.

Reserve Quantity Priority

The Exchange proposes to amend Rule 11.9(a)(6) to modify the description of the priority of an order with a Reserve Quantity and to amend certain terms to be consistent with the order type clarification under proposed Rules 11.6 and 11.8.

For both the Fixed Replenishment and Random Replenishment instruction, the displayed quantity receives a new time stamp each time it is replenished from the Reserve Quantity. The Reserve Quantity retains the time stamp of its original entry. Current Rule 11.8(a)(6) discusses the priority of the Reserve Quantity of an order and states that ''[a] new time stamp is created both for the refreshed and reserved portion of the order each time it is refreshed from reserve.'' The Exchange proposes to amend this description to state that a new time stamp is created only for the displayed quantity of the order each time it is replenished from Reserve Quantity. In addition, as discussed above, proposed Rule 11.8(m)(1) states that a new time stamp is created for the portion of the order with a Displayed instruction each time it is replenished from the Reserve Quantity, while the Reserve Quantity retains the time-stamp of its original entry.

Example. Assume a Limit Order to buy 2,000 shares at $100 is entered with a Displayed instruction for a quantity of 500 shares. The order defaults to a Fixed Replenishment instruction of 500 shares, equal to its initial displayed quantity. An inbound Market Order to sell arrives for 490 shares and executes against the displayed quantity of 500 shares. As per the Fixed Replenishment instructions, 500 shares are deducted from the Reserve Quantity and added to the displayed quantity of 10 shares. The now displayed 500 shares and remaining 10 shares are both given a new identical time stamp as of the time of replenishment and displayed as a single order for 510 shares on the EDGX Book.

Additional Clarifications

The Exchange also proposes to make additional clarifying and conforming

changes to proposed Rule 11.9. First, the Exchange proposes to add titles to Rules 11.9(a)(3)–(8). These titles are not intended to alter the meaning of these subsections; they simply seek to assist the reader in identifying the topic each subsection is to address. Second, the Exchange proposes to replace the term, ''Market participants'' under Rule 11.9(a)(3) with the term ''Users.'' Lastly, the Exchange proposes to update the cross-reference in Rule 11.9(a)(4) from Rule 11.5(e), Cancel/Replace Messages, to proposed Rule 11.10(e), Cancel Replace Messages. As discussed below, the Exchange proposes to relocate the text of Rule 11.5(e) and renumber it as Rule 11.10(e).

Organizational and Ministerial Changes to Rule 1.5, Rule 8.15, and Chapter XI

The Exchange also proposes to make a series of organizational, conforming changes to internal references, and clarifying changes to Rule 1.5, Rule 8.15, and Chapter XI. These changes are:

- Rules 1.5 and 8.15, update internal cross-references to rules in Chapter XI to reflect the renumbering of certain rules;
- Rule 11.5(e), Cancel/Replace Messages, would be renumbered and relocated to proposed Rule 11.10(e); [71]
- The content of Rule 11.6, Units of Trading, would be amended (described above) and included as a set of defined terms in proposed Rule 11.6, Definitions, as Rule 11.6(s);
- The content of Rule 11.7, Price Variations, would be relocated and included as a set of defined terms in proposed Rule 11.6, Definitions, as Rule 11.6(i) (described above);
- Current Rule 11.8, Priority of Orders is to be amended and renumbered as Rule 11.9 (described above).
- Exchange Rule 1.5(dd) defines ''Top of Book'' as ''the best-ranked order to buy (or sell) in the EDGX Book as ranked pursuant to Rule 11.8.'' As a result of Rule 11.8 being renumbered to Rule 11.9, the Exchange proposes to amend the cross reference to Rule 11.8 in Rule 1.5(dd) to reflect Rule 11.9;
- Rule 11.9, Order Execution, would be renumbered as Rule 11.10;
- Rule 11.9(b), Routing, and 11.9(c), Priority of Routed Orders, would be removed in their entirety from Rule 11.9 and relocated to form a new standalone Rule 11.11, Routing to Away Trading Centers;
- Rules 11.9(d), Display of Automated Quotations, would be renumbered as Rule 11.10(b);
- Rule 11.9(e), Self-Help, would be renumbered as Rule 11.10(c);
- Rule 11.9(f), Anti-Internalization Qualifier (''AIQ''), would be renumbered as Rule 11.10(d) and renamed ''EdgeRisk Self Trade Prevention (''ERSTP''). All referenced to ''AIQ'' would be replaced with ''ERSTP'';
- Rule 11.9(g), Market Access, would be relocated and renumbered as Rule 11.11(i);
- Rule 11.10, Trade Execution and Reporting, would be renumbered and renamed as Rule 11.12, Trade Reporting. The Exchange believes this name change more accurately reflects to the requirements of the rule;
- Rule 11.11, Clearance and Settlement; Anonymity, would be renumbered as Rule 11.13;
- Rule 11.12, Limitation of Liability, would be renumbered as Rule 11.14;
- Rule 11.13, Clearly Erroneous Executions, would be renumbered at Rule 11.15;
- Rule 11.14, Trading Halts Due to Extraordinary Market Volatility, would be renumbered as Rule 11.16;
- Rule 11.15, Short Sales, would be renumbered and relocated as Rule 11.10(a)(5);
- The content of Rule 11.16(a), Locking or Crossing Quotations in NMS Stocks, would be relocated to Rule 11.6, Definitions. The content of Rule 11.16(b), (c), and (d) would be relocated and renumbered as Rule 11.10(f), Locking and Crossing Quotations in NMS Stocks;
- Rule 11.17, Reserved, would be deleted;
- Rule 11.18, Registration of Market Makers, would be renumbered as Rule 11.17;
- Rule 11.19, Obligations of Market Maker Authorized Traders, would be renumbered at Rule 11.18;
- Rule 11.20, Registration of Market Makers in a Security, would be renumbered as Rule 11.19;
- Rule 11.21, Obligations of Market Makers, would be renumbered at Rule 11.20. Rule 11.21 would be entitled, ''Retail Orders'' as described below; and
- Rule 11.22, Input of Accurate Information would be relocated and renumbered as Rule 11.5.

Order Execution (renumbered Rule 11.10)

The Exchange also proposes to make a series of ministerial changes to proposed Rule 11.10, Order Execution. First, the Exchange proposes to amend Rule 11.10(a)(3)(A) to clarify that it includes orders with a TIF instruction of FOK. Currently, proposed Rule 11.10(a)(3)(A) states ''where a non-routable buy (sell) order is entered into the System at a price less (greater) than or equal to the Upper (Lower) Price Band, such order will be posted to the EDGX Book or executed, unless (i) the order that is an IOC Order, in which case it will be cancelled if not executed, or (ii) the User has entered instructions to cancel the order.'' As amended, subsection (i) of Rule 11.10(a)(3)(A) would state that an order with a TIF of IOC or FOK will be cancelled and not posted to the EDGX Book in such circumstances.

Second, the Exchange proposes to amend proposed Rule 11.10(a)(4) to clarify the treatment of orders upon receipt by the System. Proposed Rule 11.9(a)(4) currently states that ''[a]n incoming order shall first attempt to be matched for execution against orders in the EDGX Book.'' The Exchange proposes to revise this language to state that the order will be matched for execution against orders on the EDGX Book unless the User includes a Post Only instruction [72] to the order or instructs the System to bypass the EDGX Book and route the order to an away Trading Center in accordance with Exchange Rules. This amendment allows a User to specify instructions: (i) To route to an away Trading Center; or (ii) for the order to be posted to the EDGX Book and not immediately execute against resting liquidity upon receipt by the System.

Third, the Exchange proposes to amend current Rule 11.9(a)(2) (renumbered as Rule 11.10(a)(2) to clarify the treatment of orders entered during the Pre-Opening Session or Post-Closing Session. Current Rule 11.9(a)(2) states that for any execution to occur during Regular Trading Hours, the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. Current Rule 11.9(a)(2) also states that for any execution to occur during the Pre-Opening Session or the Post-Closing Session, the price must be equal to or better than the highest bid or lowest offer. The Exchange proposes to clarify

[71] The Exchange also proposed to amend paragraph (e)(1) of proposed renumbered Rule 11.10 to state that orders may only be cancelled or replaced if the order has a TIF instruction other than IOC and FOK and if the order has not yet been executed in its entirety.

[72] The Exchange notes that an order with a Post Only Instruction and a Price Adjust or Hide Not Slide instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See* proposed Exchange Rule 11.6(n)(4).

that an execution will occur during the Pre-Opening Session or the Post-Closing Session at a price equal to or better than the highest bid or lowest offer on the EDGX Book or disseminated by the responsible single plan processor, unless the order is marked ISO. Thus, the proposed text will make clear that the System accepts orders marked ISO during the Pre-Opening Session and Post-Closing Session, and will execute orders marked ISO regardless of the highest bid or lowest offer.

Fourth, current Exchange Rule 11.9(d) (renumbered as Rule 11.10(b)), Display of Automated Quotations, states that the Exchange shall communicate to Users its procedures concerning a change from automated to ''manual quotations'' (as defined in Regulation NMS) when the System is incapable of displaying automated quotations. The Exchange proposes to amend this rule to clarify that that when a system malfunction renders the System incapable of displaying automated quotations, the System will be disabled by the Exchange and will be unable to accept any orders. The Exchange also proposes to amend the rule to clarify that the Exchange shall promptly communicate to Users the unavailability of the System.

Lastly, as described more fully above, the Exchange proposes to update various rule cross-references to reflect the proposed re-numbering of certain rules within Chapter XI.

Rule 11.9(b), Routing (Proposed Rule 11.11)

The Exchange proposes to amend Rule 11.9(b)(2) (renumbered as Rule 11.11(a)) to describe which re-pricing instructions to comply with Rule 201 of Regulation SHO may apply to the unexecuted portion of an order routed to an away Trading Center when a Short Sale Circuit Breaker is in place. The rule currently provides, in part, that ''[f]or any other order ineligible for routing due to a short sale price test restriction, the Exchange will post the unfilled balance of the order to the EDGX Book, treat the order as if it was an EDGX Only Order, and subject it to the short sale price sliding process, as described in [current] Rule 11.5(c)(4).'' The Exchange proposes a conforming amendment to this rule to reflect that the default process is the Short Sale Price Adjust instruction, rather than the Short Sale Price Sliding instruction, unless the User has elected to use an alternative process as described in proposed Rule 11.6(l) or to have the ordered Cancel Back as described in Rule 11.6(b). The Exchange also proposes to remove the reference to the EDGX Only Order because it is no longer classified as a standalone order type.

The Exchange also proposes to amend Exchange Rule 11.9(b)(1)(C), Routing of Market Orders (renumbered as Rule 11.11(e)) to be consistent with current System functionality. Currently, Rule 11.9(b)(1)(C) states, in part, that where a Market Order is routed to an away Trading Center for execution, any unexecuted portion returned to the Exchange will be treated as follows:

> Depending on parameters set by the User when the incoming order was originally entered, the System will either: (i) process the unfilled balance of an order as a EDGX Only Order pursuant to Rule 11.5(c)(4), or (ii) repeat the process described in paragraph (a)(4) above and this paragraph (b)(1)(C) by executing against the EDGX Book and/or routing orders to other market centers until the original, incoming order is executed in its entirety.

The Exchange proposes to delete this language from Rule 11.9(b)(1)(C) and to add new language to proposed renumbered Rule 11.11(e) to reflect that any unexecuted portion of a Market Order that is returned to the System will be cancelled back to the User. This language reflects current System functionality.

Retail Orders, Proposed Rule 11.21

The Exchange also proposes to add proposed Rule 11.21, Retail Orders. Currently, Footnote 4 of the Exchange's Fee Schedule: (i) Defines a ''Retail Order;'' (ii) provides an attestation requirement for Members to comply with when sending Retail Orders to the Exchange; and (iii) allows Members to designate orders as Retail Orders on an order-by-order basis or default certain of their FIX ports as ''Retail Order Ports.'' The Exchange proposes to move the definition of ''Retail Order'' and the related attestation requirements from Footnote 4 of the Fee Schedule to proposed Rule 11.21, Retail Orders. The Exchange does not propose to change any of the requirements of its Retail Order program.

Like Footnote 4 of the Fee Schedule, proposed Rule 11.21(a) will define a ''Retail Order'' as an order that: (i) Is an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology.''

The Exchange would continue to require under proposed Rule 11.21(b) that Members sign a written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as Retail Orders comply with the above requirements. Proposed Rule 11.21(c) would carry from the Fee Schedule the requirement that, if the Member represents Retail Orders from another broker-dealer customer, that the Member's supervisory procedures be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

Proposed Rule 11.21(d) will continue to specify that Members will only be able to designate their orders as Retail Orders on either an order-by-order basis using FIX ports or by designating certain of their FIX ports at the Exchange as ''Retail Order Ports.'' Proposed Rule 11.21(e) will continue to permit Members to designate that their Retail Orders be identified as Retail on the EDGX Book Feed, rather than by their MPID. A Member may elect that their Retail Orders be identified as Retail on an order-by-order basis or instruct the Exchange to identify all its Retail Orders as Retail on a port-by-port basis where that port is also designated as a Retail Order Port. However, if a Member instructs the Exchange to identify all its orders as Retail on a Retail Order Port, it will not be able to designate any Retail Order from that port as Attributable or as Non-Attributable.

The Exchange believes that including the definition of Retail Order and related attestation requirements under Chapter XI as Rule 11.21 is appropriate because these provisions reflect functional and definitional aspects of the Exchange's Retail Order program, not merely fee-related information. Including the descriptions of the Exchange's Retail Order program with other rules related to order types should help increase the clarity and transparency of the Exchange's rulebook.

2. Statutory Basis

The Exchange believes that its proposal to amend and reorganize its rules to provide additional specificity regarding the functionality of the

Exchange's System, including the operation of its order types and order instructions, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[73] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[74] because it would 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[75] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the reorganized and enhanced descriptions of the Exchange's order types, order instructions, and System functionality would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the operation of the Exchange. The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand. Moreover, the Exchange believes that the additional clarity, transparency and readability of the proposed rule change would promote the efficient execution of investor transactions, and thus strengthen investor confidence in the market. In addition, the Exchange believes that additional specificity in its rules will lead to a better understanding of the Exchange's operation, thereby facilitating fair competition among brokers and dealers and among exchange markets. In particular, the Exchange believes that the revised descriptions of the Exchange's order types, order instructions, and System functionality will provide Members, Users, and the investing public further clarification about how the Exchange operates.

Opening Process

The newly added description of the Opening Process in Rule 11.7 is designed to promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market system because it would describe: (i) Which orders may participate in the process; (ii) how the price of the Opening Transaction is determined; and (iii) the process for late openings and re-openings.

The Exchange believes setting the price of the Opening Process at the midpoint of the first NBBO disseminated after 9:30:00 a.m. Eastern Time will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Opening Process at a price that is objectively established by the market for the security. In addition, the Exchange believes that it is reasonable to set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported within one second of publication of the first two-sided quotation by the listing exchange. The Exchange believes it is reasonable to require a first reported trade or two-sided quotation for securities listed on the NYSE or NYSE MKT because those markets do not operate a pre-market trading session during which Members, Users, and the investing public may discover the market price for a security. Therefore, the Exchange believes utilizing the first NBBO subsequent to the first reported trade or then prevailing NBBO when the first two-sided quotation is published promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes accurately reflects the market for the security. The Exchange also believes it is reasonable to set the price of the Opening Process for NYSE and NYSE MKT securities at the then prevailing NBBO when the first two-sided quotation is published by the listing exchange when no first trade is reported within one second of publication of the first two-sided quotation. At times, no first trade is reported immediately following the publication of the first two-sided quotation. This is common in less liquid securities. Setting the price of the Opening Process at the then prevailing mid-point in such circumstances would permit the System to open the security in a timely manner at a price that is objectively determined by the market for the security.

In addition, the Exchange believes the Opening Process following a halt, suspension, or pause is designed to promote just and equitable principles of trade. Under proposed Rule 11.7(e), re-openings will occur at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following a halt, suspension, or pause; or (ii) then prevailing NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported within one second of publication of the first two-sided quotation by the listing exchange. Like when pricing the Opening Process for securities listed on the NYSE and NYSE MKT discussed above, the Exchange also believes it is reasonable to require a first reported trade or two-sided quotation prior to opening a security because no trading occurs during a halt, suspension or pause during which Members, Users, and the investing public may gauge the market for a security. Therefore, the Exchange believes calculating a midpoint price at which to re-open a security following a halt, suspension, or pause as described above promotes just and equitable principles of trade because it ensures a midpoint price that accurately reflects the market for the security.

The operation of the Contingent Open under proposed Rule 11.7 is designed to promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, and free and open market system because it would enable the System to transition to the Regular Session in a timely manner where a security has not opened on the relevant listing exchange. In the Exchange's experience, most securities are open by 9:45:00 a.m. Eastern Time. However, at times, a security may not open by 9:45:00 a.m. This is common in less liquid securities. The Exchange notes that other exchanges that do not employ an opening process may begin trading the security at 9:30:00 a.m. Eastern Time despite the security not being open on the relevant listing exchange.[76] The Exchange believes it is reasonable to transition to the Regular Session pursuant to the Contingent Open process under proposed Rule 11.7 so that orders may be placed by the System on the EDGX Book, cancelled, executed, or routed to away Trading

[73] 15 U.S.C. 78f(b).

[74] 15 U.S.C. 78f(b)(5).

[75] 15 U.S. C. 78k–1(a)(1).

[76] NSX Rule 1.5(R) defining ''Regular Trading Hours'' as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' NSX Rules do not account for an opening process. CHX Article 20, Rule 1 stating that the regular trading session begins at 8:30 Central Time. Like the NSX, CHX Rules do not account for an opening process.

Centers in accordance with proposed renumbered Rule 11.11. Notwithstanding the occurrence of a Contingent Open, the Exchange believes it is reasonable to not place MidPoint Match Orders on the EDGX Book until the conditions set forth under proposed Rule 11.7(c) for determining the price of the Opening Process have been met. MidPoint Match Orders are only eligible to execute at the midpoint of the NBBO.[77] An NBBO may not be available for the Exchange to calculate a midpoint until the conditions under Rule 11.7(c) occur.

Lastly, proposed Exchange Rule 11.7 is similar to, and based on, ISE Rule 2106. Unlike, ISE Rule 2106, Exchange Rule 11.7(d) contains provisions for late openings if the conditions in proposed Rules 11.7(c)(1) and (2) are not satisfied.[78] Also unlike ISE Rule 2106, proposed Rule 11.7 permits the Exchange to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

Order Types and Order Instructions

Similarly, the Exchange believes that the proposed changes to its rulebook related to order types and order instructions provide further clarification to Members, Users, and the investing public regarding the operation of the Exchange's order types and order instructions. Unless otherwise stated, the Exchange is not proposing to substantively modify the operation of any of the current defined order types or instructions or the operation of the System. The Exchange believes the proposed amendments will provide greater transparency regarding the Exchange's order types, order instructions, and System functionality.

Re-Pricing

The Exchange believes that the proposed clarification of its re-pricing instructions are consistent with Section 6(b)(5) of the Act,[79] as well as Rule 610 of Regulation NMS[80] and Rule 201 of Regulation SHO.[81] The Exchange is not modifying the overall existing functionality of its re-pricing instructions, which, to avoid becoming a Locking Quotation or Crossing Quotation or to comply with Rule 201 of Regulation SHO, displays orders at permissible prices while in some cases retaining a different non-displayed, ranked price at which the User is willing to buy or sell. Instead, the Exchange proposes to describe the re-pricing instructions currently available to Users by introducing and defining four new instructions in proposed Rule 11.6(l) with regard to Regulation NMS compliance—Price Adjust, Hide Not Slide, Single Re-Price,[82] and Routed and Returned Re-Pricing, and three new instructions with regard to Regulation SHO compliance—Short Sale Price Adjust, Short Sale Price Sliding, and Short Sale Single Re-Price.[83] The Exchange also proposes to describe in its rules the re-pricing instruction for orders with a Non-Displayed instruction. The Exchange believes these further clarifications of its re-pricing instructions will provide increased transparency to Members, Users, and the investing public regarding how orders with a re-pricing instruction are to be handled and displayed by the System.

Rule 610(d) of Regulation NMS requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.''[84] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.''[85] Similarly, Rule 201 of Regulation SHO[86] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. Thus, the re-pricing instructions offered by the Exchange are designed to comply with Rule 610(d) and Rule 201 by assisting Users in displaying and executing orders at permissible prices. In addition, as described in further detail below, the Exchange notes that other exchanges offer similar functionality.[87]

The Exchange notes that an order that, if displayed at its limit price, would be a Locking Quotation or Crossing Quotation, would be automatically defaulted by the System to the Price Adjust instruction, unless the User affirmatively elects an alternative instruction: (i) The Cancel Back instruction; (ii) the Hide Not Slide instruction; or (iii) the Single Re-Price instruction. Users who do not prefer the defaulted re-pricing instruction are free to select another re-pricing instruction or to select the Cancel Back instruction. The Exchange believes it is reasonable to default orders to the Price Adjust instruction because such instruction most closely aligns with the purpose of an order sent to the Exchange with a re-pricing instruction generally. The use of a re-pricing instruction indicates the User's intent to forgo an execution in order to post to the Exchange's order book and to receive a rebate upon execution rather than paying a fee to remove liquidity on the Exchange or routing to an away Trading Center. Orders utilizing the Price Adjust instruction would be posted to the EDGX Book and receive a rebate when executed because they act as liquidity providers. While an order utilizing the Hide Not Slide instruction would receive a rebate when executed at its displayed price or at the Locking Price, it may also pay a fee if executed at the midpoint of the NBBO. In addition to paying a fee rather than receiving a rebate, an execution at the midpoint of the NBBO is a worse price (i.e., higher for a buy order or lower for a sell order), than an execution at a price that has been re-priced pursuant to the Price Adjust instruction. Therefore, the Exchange believes defaulting to the Price Adjust instruction is designed to promote just and equitable principles of trade because it is designed to assist market participants in better controlling their execution costs and is the re-

[77] *See* current Exchange Rule 11.5(c)(7) and proposed Exchange Rule 11.8(d).

[78] *See* Securities Exchange Act Release No. 54287 (August 8, 2006), 71 FR 46947(August 15, 2006) (SR–ISE–2006–48).

[79] *Id.*

[80] 17 CFR 242.610.

[81] 17 CFR 242.201.

[82] The Exchange notes that other exchanges offer similar functionality. *See* Nasdaq Rule 4751(f)(7) (Price to Comply Order), BZX Rule 11.9(g)(1) (Display-Price Sliding), BYX 11.9(g)(1) (Display-Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(i) (NMS Price Sliding).

[83] Other exchanges utilize similar re-pricing processes. *See e.g.,* CHX Art. I, Rule 2(b)(1)(C), BZX Rules 11.9(c)(4), (6) and 11.9(g)(2), BYX Rules 11.9(c)(4), (6) and 11.9(g)(2), and Nasdaq's ''Re-pricing of Orders during Short Sale Period'' described in Nasdaq Rule 4763(e).

[84] 17 CFR 242.610(d).

[85] *Id.*

[86] 17 CFR 242.201.

[87] *See* Nasdaq Rule 4751(f)(7) (Price to Comply Order), BZX Rule 11.9(g)(1) (Display-Price Sliding), BYX 11.9(g)(1) (Display-Price Sliding), and CHX Rule Art. I, Rule 2(b)(1)(C)(i) (NMS Price Sliding). *See also* CHX Art. I, Rule 2(b)(1)(C), BZX Rules 11.9(c)(4), (6) and 11.9(g)(2), BYX Rules 11.9(c)(4), (6) and 11.9(g)(2), and Nasdaq's ''Re-pricing of Orders during Short Sale Period'' described in Nasdaq Rule 4763(e).

pricing instruction most closely aligned with the general intent re-pricing instructions generally.

The Exchange also believes that ranking orders with a Hide Not Slide instruction or orders with a Non-Displayed instruction at the midpoint of the NBBO is designed to promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, and free and open market system. Ranking to the mid-point of the NBBO in such cases would enable the System to avoid an internal cross on the EDGX Book (*e.g.,* an order to buy (sell) that is priced higher (lower) than a Mid-Point Match order to sell (buy)). The Exchange believes an internally crossed book is not indicative of a fair and orderly market because a User may receive a worse price if its order is executed during a crossed market rather than if the System executed the trade while the EDGX Book was not internally crossed. Therefore, the Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

The Exchange also believes that ranking orders with a Hide Not Slide instruction or orders with a Non-Displayed instruction at the midpoint of the NBBO, which can be a sub-penny increment, is consistent with Rule 612 of Regulation NMS and Rule 610(d) under Regulation NMS, as they are temporary price points that allow the Exchange to avoid an internally crossed book.[88] Rule 612 generally prohibits a national securities exchange from displaying, ranking or accepting a bid, offer or order in any NMS stock priced in an increment smaller than $0.01 if such bid, offer or order is priced at $1.00 per share or greater. In the Adopting Release for Regulation NMS,[89] the Commission stated that:

> Rule 612 will not prohibit a sub-penny execution resulting from a midpoint or volume weighted algorithm or from price improvement, so long as the execution did not result from an impermissible sub-penny order or quotation. The Commission believes at this time that trading in sub-penny increments does not raise the same concerns as sub-penny quoting. Sub-penny executions do not cause quote flickering and do not decrease depth at the inside quotation. Nor do they require the same systems capacity as would sub-penny quoting. In addition, sub-penny executions due to price improvement are generally beneficial to retail investors.

The Exchange's proposal is consistent with the above stated policy articulated by the Commission permitting sub-penny trades resulting from midpoint executions in recognition of the price improvement benefits to retail investors.[90] The Exchange also notes that permitting an execution in a sub-penny increment under certain limited circumstances is consistent with the rules of other exchanges, including the Exchange, in the form of midpoint orders.[91]

The Exchange also believes that its proposed Routed and Returned Re-Pricing instruction promotes just and equitable principles of trade because it is designed to permit routed orders returned to the EDGX Book that, if displayed, would be a Locking Quotation or Crossing Quotation, to be displayed and re-displayed up to their limit price in response to changes in the NBBO. The Exchange believes that it is reasonable and appropriate to default an order returning to the EDGX Book after having routed to away destinations to the Routed and Returned Re-Pricing instruction because it can be presumed that such orders are aggressive price takers. The Routed and Returned Re-Pricing instruction provides such order access to liquidity at the midpoint of the NBBO as well as the ability to execute at the previously locked prices on the way to it being ranked to its limit price. The Exchange notes that Users who do not prefer the defaulted re-pricing instruction are free to select another re-pricing instruction or to select the Cancel Back instruction.

Likewise, the Exchange also believes it is reasonable to default Short Sale Orders to the Short Sale Price Adjust instruction because it would enable Short Sale Orders to be continuously re-ranked and displayed up to their limit price in response to declines in the NBB. An order subject to the Short Sale Price Adjust instruction would be re-ranked and displayed at the Permitted Price, which is one Minimum Price Variation above the current NBB. Following the initial re-ranking, the order will, to the extent the NBB declines, continue to be re-ranked and displayed at the Permitted Price down to the order's limit price. Orders subject to the Short Sale Price Sliding instruction are only re-ranked once following the initial ranking. Under the Short Sale Single Re-Price instruction, the Short Sale Order would not be adjusted further to reflect a decline in the NBB following its initial ranking. Therefore, the Exchange believes automatically defaulting Short Sale Orders to the Short Sale Price Adjust instruction promotes just and equitable principles of trade because it would enable the order to be displayed and re-displayed up to its limit price by being continuously re-priced in response to declines in the NBB. The Exchange notes that Users who do not prefer the defaulted re-pricing instruction are free to select another re-pricing instruction or to select the Cancel Back instruction.

In addition, the Exchange notes that other exchanges offer functionality similar to that proposed by this filing. The Price Adjust instruction under proposed Rule 11.6(l)(1)(A) and Hide Not Slide instruction under proposed Rule 11.6(l)(1)(B) are similar to Nasdaq's Price to Comply under Nasdaq Rule 4751(f)(7). Under Nasdaq Rule 4751(f)(7), a Price to Comply order is an order that, if, at the time of entry, would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and, like the Exchange's proposed Price Adjust instruction, displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). Unlike Nasdaq's Price to Comply order, a buy (sell) order subject to the Price Adjust instruction would also be ranked one Minimum Price Variation lower (higher) than the Locking Price. Under the Hide Not Slide instruction under proposed Rule 11.6(l)(1)(B), a buy (sell) order that, if, displayed by the System on the EDGX Book at the time of entry, would be a Locking Quotation or Crossing Quotation will also be displayed at a price that is one Minimum Price Variation lower (higher) than the Locking Price, but, unlike Nasdaq's Price to Comply Order, will be ranked at the midpoint of the NBBO with discretion to execute at the Locking Price.

The Price Adjust instruction under proposed Rule 11.6(l)(1)(A) and Hide Not Slide instruction under proposed Rule 11.6(l)(1)(B) are similar to the display-price sliding functionality set forth in BZX Rule 11.9(g) and BYX Rule 11.9(g). Like the functionality offered by BZX and BYX, under both the Price Adjust instruction and the Hide Not Slide instruction an order will re-priced and displayed at one Minimum Price Variation below the NBO (for bids) or

[88] 17 CFR 242.610(d).

[89] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37556 (June 29, 2005).

[90] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37556 (June 29, 2005).

[91] *See* BATS Rule 11.9(c)(9) (''Mid-Point Peg Order''); *see also* NASDAQ Rule 4751(f)(4) (''Midpoint Peg Order''); NYSE Arca Equities Rule 7.31(h)(5) (''Mid-Point Passive Liquidity Order''); EDGX Rule 11.5(c)(7) (''Mid-Point Match Order''). The order types listed above are not displayed but can execute at the mid-point of the NBBO, including in penny-wide markets.

above the NBB (for offers) and display at the Locking Price when that price no longer locks the Protected Quotation. The differences are as follows: BZX and BYX offers multiple price sliding, while the Exchange does not. Also, under the Price Adjust instruction, an order is ranked at its displayed price and under the Hide Not Slide instruction an order is ranked at the midpoint of the NBBO, whereas an order subject to display-price sliding is ranked at the Locking Price for BZX and BYX. In addition, pursuant to Rule 11.13(a)(1) BZX and BYX execute a BATS Only Order, in certain circumstances at one-half Minimum Price Variation less than the Locking Price for bids, and one-half Minimum Price Variation more than the Locking Price for offers, which is similar to the operation of orders with a Hide Not Slide instruction.

The Single Re-price instruction under proposed Rule 11.6(l)(1)(C) is similar to Nasdaq's Price to Comply Post Only under Nasdaq Rule 4751(f)(8). Like an order subject to the Exchange's Single Re-Price instruction, a Price to Comply Post Only Order that, ''at the time of entry, would create a violation of Rule 610(d) of Regulation NMS under the Act by locking or crossing the protected quotation of an external market or would cause a violation of Rule 611 of Regulation NMS under the Act, the order will also be re-priced and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current NBO (for bids) or to one penny above the current NBB (for offers).''

The Exchange's Short Sale Price Adjust instruction in Rule 11.6(l)(2) is functionally similar to BZX and BYX Short Sale Price Sliding in BZX Rule 11.9(g)(2) and BYX Rule 11.9(g)(2) and Nasdaq's ''Re-pricing of Orders during Short Sale Period'' described in Nasdaq Rule 4763(e). Under both the Exchange's Short Sale Price Adjust instruction and Nasdaq's Re-pricing of Orders during Short Sale Period, orders that cannot be executed or displayed in compliance with Rule 201 of Regulation SHO will be re-priced at one minimum price variation above the current NBB. The order will continue to be re-priced to reflect declines in the NBB down to the order's original limit price. BZX and BYX's Short Sale Price Sliding under BZX Rule 11.9(g)(2) and BYX Rule 11.9(g)(2) operate in a similar manner but with one non-material difference: members must elect that their order continue to be re-priced to reflect declines in the NBB down to the order's original limit price.

Priority

The Exchange also believes its further clarifications under proposed Rule 11.9 to reflect the priority of orders promotes just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing Members, Users, and the investing public with greater transparency regarding how the System operates. The Exchange does not propose to modify the priority of orders at the same price or the operation of the System. The proposed rule change clearly delineates the three order priority scenarios that the Exchange utilizes, thereby providing valuable, clear information to Members, Users, and the investing public on how their orders would be executed. Specifically, proposed Rule 11.9 would describe execution priority for orders: (i) At a price other than the midpoint of the NBBO; (ii) priced at the midpoint of the NBBO; and (iii) buy (sell) orders utilizing instructions that result in their being re-priced upon clearance of a Locking Quotation. Furthermore, the Exchange believes that the proposed rule changes regarding order priority will provide greater transparency and further clarity on how the various order types will be assigned priority under various scenarios, thereby assisting Members, Users and the investing public in understanding the manner in which the System may execute their orders.

The first category of order priority is set forth under proposed Rule 11.9(a)(2)(A), which outlines the priority of orders at prices other than the mid-point of the NBBO. The Exchange notes that the priority under proposed Rule 11.9(a)(2)(A) is substantively consistent with current Exchange Rule 11.8(a)(2). The Exchange is simply modifying the language to: (i) Further describe that it applies to equally priced trading interest at prices other than at the midpoint of the NBBO; and (ii) amend the description of order types under proposed Rules 11.9(a)(2)(A)(i)–(iv) to be consistent with proposed Rule 11.8, Order Types. As amended, proposed Rule 11.9(a)(2)(A) would state that the System will execute equally priced trading interest within the System at prices other than at the midpoint of the NBBO in time priority in the following order: (i) The portion of a Limit Order with a Displayed instruction; (ii) Limit Orders with a Non-Displayed instruction and the Reserve Quantity of Limit Orders; (iii) Limit Orders executed within their Discretionary Range; and (iv) Route Peg Orders. The priority scheme outlined in proposed Rule 11.9(a)(2)(A) does not modify the Exchange's existing functionality; it merely seeks to state that it applies to equally priced trading interest at prices other than the NBBO. Furthermore, the order priority set forth under Rule 11.9(a)(2)(A) is similar to the rules of other exchanges.[92]

The second category of priority set forth under proposed Rule 11.9(a)(2)(B) clarifies the priority of orders that are priced at the midpoint of the NBBO. The Exchange proposes to execute trading interest priced at the midpoint of the NBBO within the System in time priority in the following order: (i) Limit Orders to which the Hide Not Slide or Routed and Returned instruction has been applied; (ii) MidPoint Match Orders; (iii) Limit Order with a Non-Displayed instruction; and (iv) Limit Orders executed within their Discretionary Range. The Exchange believes it is reasonable and appropriate to grant first priority to Limit Orders subject to the Hide Not Slide instruction because they are displayed on the EDGX Book one Minimum Price Variation away from the Locking Price, while other orders at the mid-point of the NBBO remain non-displayed.[93] In equity markets generally, displayed orders are traditionally given first priority over non-displayed orders due to their contribution to the price discovery process. Providing second priority to MidPoint Match Orders ahead of Limit Orders with a Non-Displayed instruction, the Reserve Quantity of Limit Orders, and the Limit Orders executed within their Discretionary Range is a reasonable means by which to encourage Users to add committed mid-point liquidity. Members utilizing MidPoint Match Orders are explicitly adding liquidity at the mid-point of the NBBO and, thereby, provide the benefit of price improving liquidity to Members, Users, and the investing public's incoming orders. The Exchange believes that encouraging orders that explicitly add liquidity at the mid-point of the NBBO, rather than inadvertently, would enhance price improvement opportunities on the Exchange by seeking to increase the overall liquidity on the Exchange at the mid-point of the NBBO. The Exchange believes providing second priority to

[92] *See* BZX Rule 11.12(a)(2); NYSE Arca Rule 7.36(a)(1); and Nasdaq Rule 4757.

[93] Under proposed Rule 11.6(l)(1)(B), buy (sell) orders subject to the Hide Not Slide instruction will be displayed at a price that is one Minimum Price Variation lower (higher) than the Locking Price, will be ranked at the midpoint of the NBBO with discretion to execute at the Locking Price.

MidPoint Match Orders ahead of other orders at the midpoint of the NBBO promotes just and equitable principles of trade because it is designed to encourage the use of Mid-Point Match Orders, motivating Members seeking price improvement to direct their orders to EDGX because they would have a heightened expectation of liquidity at the midpoint of the NBBO.

The third category of order priority set forth under proposed Rule 11.9(a)(2)(C) clarifies the priority of orders that utilize instructions that result in their being re-priced contingent upon a Locking Quotation or Crossing Quotation no longer existing. In such case, the System would re-price such orders to the Locking Price. Proposed Rule 11.9(a)(2)(C) would state that where an order is re-priced to the Locking Price after the Locking Quotation or Crossing Quotation no longer exists, the System will re-rank and display such orders at the Locking Price in time priority in the following order: (i) ISO with a TIF instruction of Day that establishes a new NBBO at the Locking Price; (ii) Limit Orders to which the Hide Not Slide or Routed and Returned instruction has been applied; (iii) Limit Orders to which the Price Adjust instruction has been applied; and (iv) orders with a Pegged instruction. The Exchange believes it is reasonable and appropriate to grant first priority in such circumstances to ISOs with a TIF instruction of Day because such orders cause the Locking Price to clear resulting in a new NBBO. The Exchange also believes that granting second priority to Limit Orders subject to the Hide Not Slide instruction is also appropriate because prior to the Locking Quotation or Crossing Quotation existing, these orders were eligible to be executed, Non-Displayed, at the Locking Price. In addition, Limit Orders subject to the Hide Not Slide instruction are more aggressively priced when a Locking Quotation or Crossing Quotation does not exist than orders subject to the Price Adjust instruction. Therefore, the Exchange believes the above priority promotes just and equitable principles of trade because it is designed to grant priority to orders that are the first to establish a new price point, thereby contributing to the price discovery process, and appropriately awards priority to orders based on the aggressiveness of their pricing.

The Exchange also believes that proposed Rule 11.9(a)(2)(D) furthers the objectives of Section 6(b)(5) of the Act,[94] because 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. Proposed Rule 11.9(a)(2(D) further clarifies current order priority of orders that are displayed on the EDGX Book due in certain circumstances. Specifically, proposed Rule 11.9(a)(2)(D) clarifies that, for purposes of priority under proposed Rule 11.9(a)(2)(A) and (B): (i) ISOs and NBBO Offset Peg Order are to be treated as Limit Orders; (ii) orders subject to a re-pricing instruction to comply with Rule 201 of Regulation SHO under proposed Rule 11.6(l)(2), including Market Orders that are displayed on the EDGX Book pursuant to proposed Rule 11.8(a)(4), maintain the same priority as Limit Orders with a Displayed instruction; and (iii) non-routable Market Orders that are posted by the System to the EDGX Book at the price of the Upper or Lower Price Band in accordance with proposed Rule 11.8(a)(4) and proposed re-numbered Rule 11.10(a)(3)(A) will maintain the same priority as a Limit Order with a Displayed Instruction at that price. The Exchange believes that the proposed Rule 11.9(a)(2)(D) provides greater transparency and further clarity on how the various orders are assigned priority equal to a Limit Order with a Displayed instruction under various scenarios, thereby assisting Members, Users and the investing public in understanding the manner in which the System may execute their orders.

Miscellaneous

The Exchange notes that several rules proposed by this filing and described above are based on or similar to the approved rules of other exchanges, as set forth below.

Discretionary Range under Exchange Rule 11.6(d) is similar to Nasdaq Rule 4751(f)(1), Discretionary Order. However, unlike Exchange Rule 11.6(d), Nasdaq Rule 4751(f)(1) states ''[t]he non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the cancellation of the open shares of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.'' Also unlike Nasdaq Rule 4751, Exchange Rule 11.6(d) would state that the Discretionary Range of an order to buy (sell) cannot be more than $0.99 higher (lower) than the order's displayed price and that an order with a Discretionary Range instruction resting on the EDGX Book will execute at its least aggressive price when matched for execution against an incoming order that also contains a Discretionary Range instruction, as permitted by the terms of both the incoming and resting order.

The term, ''Locking Price'' under proposed Rule 11.6(f) is similarly defined in the BZX Rule 11.13(a)(1), which defines ''locking price'' as ''. . . prices equal to displayed orders on the other side of the market.''

Minimum Execution Quantity under proposed Rule 11.6(h) is similar to Nasdaq Rule 4751(f)(5) and NSX Rule 11.11(c)(2)(B). Proposed Exchange Rule 11.6(h) does differ from Nasdaq Rule 4751(f)(5) and NSX Rule 11.11(c)(2)(B) by providing additional specificity regarding the operation of an order with a Minimum Execution Quantity, partial executions, and when a Minimum Execution Quantity may no longer apply.

The Primary Peg and Market Peg instructions under proposed Rule 11.6(j) are similar to Nasdaq Rule 4751(f)(4). Under Nasdaq Rule 4751(f)(4), Pegged Orders are orders that, after entry, have their price automatically adjusted by the System in response to changes in the NBBO. Like the Primary Peg and Market Peg instructions under proposed Rule 11.6(j), the Nasdaq's Pegged Order under Nasdaq Rule 4751(f)(4) can ''specify that its price will equal the inside quote on the same side of the market ('Primary Peg'), or the opposite side of the market ('Market Peg').'' Like under proposed Exchange Rule 11.6(j), NYSE's Pegged Order may have a limit price beyond which the order shall not be executed and NYSE's Primary Peg and Market Peg Orders may also include an offset. Proposed Exchange Rule 11.6(j) does differ from NYSE Rule 13 by providing additional specificity regarding the operation of an offset, the order's functionality during a locked or crossed market, and where an order that contains both a Pegged and Non-Displayed instruction may be re-priced.

The replenishing of the displayed portion of an order from a Reserve Quantity under proposed Rule 11.6(m) is similar to, but contains more

[94] 15 U.S.C. 78f(b)(5).

specificity than Nasdaq Rule 4751(f)(2) (Reserve Orders) and NYSE Rule 13 (Reserve Order Types). Under Exchange Rule 11.6(m), Nasdaq Rule 4751(f)(2), and NYSE Rule 13, the displayed portion is given a new time stamp when it is replenished while the non-displayed portion retains its original time stamp.

The proposed definition of Post Only under proposed Rule 11.6(n) is similar to the BATS Post Only Order under BZX Rule 11.9(c)(6) and BYX Rule 11.9(c)(6). Like proposed Rule 11.6(n), BZX Rule 11.9(c)(6), BYX Rule 11.9(c)(6) permit an execution where the price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity.

TIF instruction of GTT under proposed Rule 11.6(q) is similar to CHX Rules Art. 1, Rule 2(d)(3) (Good 'Til Date), BZX Rule 11.9(b)(4) (Good 'til Day), BYX Rule 11.9(b)(4) (Good 'til Day), and Nasdaq Rule 4751(h)(4) (System Hours Expire Time).

The operation of an ISO with a TIF instruction of Day is similar to the Post ISO order on the NSX under NSX Rule 11.11(c)(8)(ii), but for the NSX stating that is will reject a Post ISO if it is immediately marketable against a displayed order on the NSX Book, while the Exchange retains such orders where they include Price Adjust, Hide Not Slide, or the Single Re-Price instruction.

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. Unless otherwise stated,[95] the Exchange does not propose to substantively modify the operation of any of the current defined order types or terms or the operation of the System; rather, it intends to enhance the clarity of the descriptions of what is currently provided in or implied by the rules regarding its current System functionality. The proposed rule change is not designed to address and competitive issues, but rather provide additional specificity and transparency to Members, Users, and the investing public regarding the Exchange's order types and system functionality, and to organize its rules in a more intuitive and less complex manner. Since the Exchange does not propose to substantively modify the operation of order types or system functionality, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–18 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–EDGX–2014–18. 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–EDGX–2014–18 and should be submitted on or before August 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17989 Filed 7–30–14; 8:45 am]

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[95] *See supra* note 4.

[96] 17 CFR 200.30–3(a)(12).

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore North Carolina, September to October 2014; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD394

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore North Carolina, September to October 2014

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (Lamont-Doherty) in collaboration with the National Science Foundation (Foundation), for an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment incidental to conducting a marine geophysical (seismic) survey in the northwest Atlantic Ocean off the North Carolina coast from September through October, 2014. The proposed dates for this action would be September 15, 2014 through October 31, 2014, to account for minor deviations due to logistics and weather. In accordance with the Marine Mammal Protection Act, we are requesting comments on our proposal to issue an Authorization to Lamont-Doherty to incidentally take, by Level B harassment only, 24 species of marine mammals during the specified activity.

DATES: NMFS must receive comments and information on or before September 2, 2014.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* Please include 0648–XD394 in the subject line. Comments sent via email to *ITP.Cody@noaa.gov,* including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application containing a list of the references used in this document, visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The Foundation has prepared a draft Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. The EA titled ''Draft Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off Cape Hatteras, September–October 2014,'' prepared by LGL, Ltd. environmental research associates, on behalf of the Foundation and Lamont-Doherty is available at the same internet address. Information in the Lamont-Doherty's application, the Foundation's EA, and this notice collectively provide the environmental information related to proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

Through the authority delegated by the Secretary, NMFS (hereinafter, we) shall grant an Authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant).

The Authorization must also prescribe, where applicable, the permissible methods of taking by harassment pursuant to the activity; other means of effecting the least practicable adverse impact on the species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses (where applicable); the measures that we determine are necessary to ensure no unmitigable adverse impact on the availability for the species or stock for taking for subsistence purposes (where applicable); and requirements pertaining to the mitigation, monitoring and reporting of such taking. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 26, 2014, we received an application from Lamont-Doherty requesting that we issue an Authorization for the take of marine mammals, incidental to conducting a seismic survey offshore Cape Hatteras, NC September through October, 2014. NMFS determined the application complete and adequate on July 15, 2014.

Lamont-Doherty proposes to conduct a high-energy, 2-dimensional (2–D) seismic survey on the R/V *Langseth* in the Atlantic Ocean approximately 17 to 422 kilometers (km) (10 to 262 miles (mi)) off the coast of Cape Hatteras, NC for approximately 38 days from September 15 to October 22, 2014. The following specific aspect of the proposed activity has the potential to take marine mammals: increased underwater sound generated during the operation of the seismic airgun arrays. Thus, we anticipate that take, by Level B harassment only, of 24 species of marine mammals could result from the specified activity.

Description of the Specified Activity

Overview

Lamont-Doherty plans to use one source vessel, the R/V Marcus *G.* Langseth (*Langseth*), seismic airgun arrays configured with 18 or 36 airguns as the energy source, one hydrophone streamer, and 90 ocean bottom seismometers (seismometers) to conduct the conventional seismic survey. In addition to the operations of the airguns, Lamont-Doherty proposes to operate a multibeam echosounder, a sub-bottom profiler, and acoustic Doppler current profiler on the *Langseth* continuously throughout the proposed survey.

The purpose of the survey is to collect and analyze data on the mid-Atlantic coast of the East North America Margin (ENAM). The study would cover a portion of the rifted margin of the eastern U.S. and the results would allow scientists to investigate how the continental crust stretched and separated during the opening of the Atlantic Ocean and magnetism's role during the continental breakup. The proposed seismic survey is purely scientific in nature and not related to oil and natural gas exploration on the outer continental shelf of the Atlantic Ocean.

Dates and Duration

Lamont-Doherty proposes to conduct the seismic survey from the period of September 15 through October 22, 2014. The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) would include approximately 792 hours of airgun operations (i.e., a 24-hour operation over 33 days). Some minor deviation from Lamont-Doherty's requested dates of September 15 through October 22, 2014, is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Thus, the proposed Authorization, if issued, would be effective from September 15, 2014 through October 31, 2014. Lamont-Doherty will not conduct the survey after October 31, 2014 to avoid exposing North Atlantic right whales (*Eubalaena glacialis*) to sound at the beginning of their migration season.

We refer the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

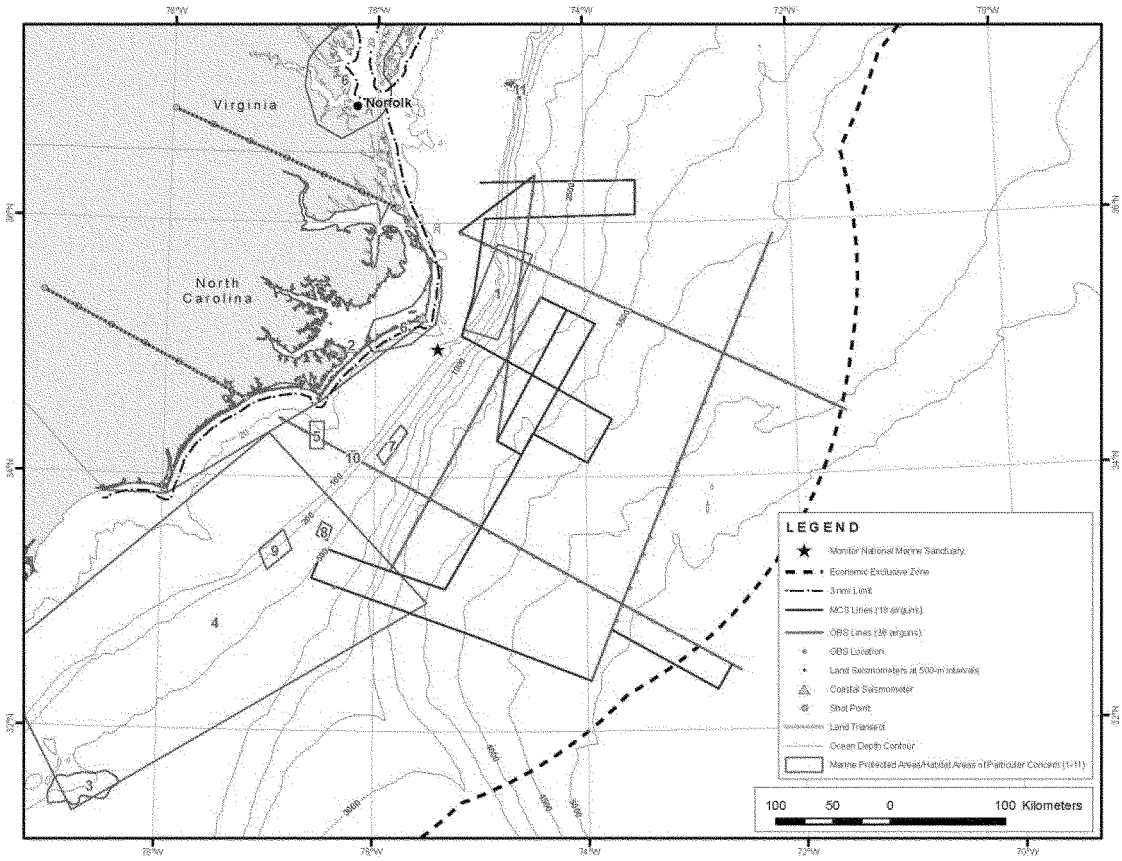
Specified Geographic Region

Lamont-Doherty proposes to conduct the seismic survey in the Atlantic Ocean, approximately 17 to 422 kilometers (km) (10 to 262 miles (mi)) off the coast of Cape Hatteras, NC between approximately 32—37° N and approximately 71.5—77° W (see Figure 1 in this notice). Water depths in the survey area are approximately 20 to 5,300 m (66 feet (ft) to 3.3 mi). They would conduct the proposed survey outside of North Carolina state waters, within the U.S. Exclusive Economic Zone, and partly in international waters.

Principal Investigators

The proposed study's principal investigators are: Drs. H. Van Avendonk and G. Christeson (University of Texas at Austin). B. Magnani (University of Memphis), D. Shillington, A. Bécel, and J. Gaherty (Lamont-Doherty), M. Hornbach (Southern Methodist University), B. Dugan (Rice University), M. Long (Yale University), M. Benoit (The College of New Jersey), and S. Harder (University of Texas at El Paso).

Figure 1 - Proposed location of the seismic survey in the Atlantic Ocean offshore Cape Hatteras, NC during September through October, 2014[1].



[1] This figure represents modifications to the tracklines as proposed by Lamont-Doherty in Figure 1of their application. Modifications based on recommendations from NMFS to reduce the total ensonified area to effect the least practicable adverse impact.

Detailed Description of Activities

Transit Activities

The *Langseth* would depart from Norfolk, VA on September 15, 2014, and transit for approximately one day to the proposed survey area. Setup, deployment, and streamer ballasting would occur over approximately three days and seismic acquisition would take approximately 33 days. At the conclusion of the proposed survey, the *Langseth* would take approximately one day to retrieve gear. At the conclusion of the proposed survey activities, the *Langseth* would return to Norfolk, VA on October 22, 2014.

Vessel Specifications

The survey would involve one source vessel, the R/V *Langseth,* and two support vessels. The *Langseth,* owned by the Foundation and operated by Lamont-Doherty, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. It has two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute (rpm). The vessel also has an 800-hp bowthruster, which is not active during seismic acquisition.

The *Langseth's* speed during seismic operations would be approximately 4.5 knots (kt) (8.3 km/hour (hr); 5.1 miles per hour (mph)). The vessel's cruising speed outside of seismic operations is approximately 10 kt (18.5 km/hr; 11.5 mph). While the *Langseth* tows the airgun array and the hydrophone streamer, its turning rate is limited to five degrees per minute, limiting its maneuverability during operations while it tows the hydrophone streamer.

The *Langseth* also has an observation tower from which protected species visual observers (observer) will watch for marine mammals before and during the proposed seismic acquisition operations. When stationed on the observation platform, the observer's eye level will be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

The University of Rhode Island's Graduate School of Oceanography operates the first support vessel, the R/V Endeavor (*Endeavor*) which has a length of 56.4 m (184 ft), a beam of 10.1 m (33 ft), and a maximum draft of 5.6 m (18.3 ft). The *Endeavor* has one diesel engine that produces 3050 hp and drives the single propeller directly at a maximum of 900 rpm. The *Endeavor* can cruise at approximately 10 kt (18.5 km/hr; 11.5 mph).

The second support vessel would be a multi-purpose offshore utility vessel similar to the *Northstar Commander,*

which is 28 m (91.9 ft) long with a beam of 8 m (26.2 ft) and a draft of 2.6 m (8.5 ft). The chase vessel has twin 450-hp screws (Volvo D125–E).

Data Acquisition Activities

The proposed survey would cover approximately 5,185 km (3,221 mi) of transect lines (approximately 3,425 km for the multi-channel seismic and approximately 1,760 km for the seismometer acquisition operations) within the survey area. This represents a 1,165 km reduction in transect lines from Lamont-Doherty's original proposal that totaled 6,350 km (3,946 mi) of transect lines within the survey area.

During the survey, the *Langseth* crew would deploy a four-string array consisting of 36 airguns with a total discharge volume of approximately 6,600 cubic inches (in^3), or a two-string array consisting of 18 airguns with a total discharge volume of 3,300 in^3 as an energy source. The *Langseth* would tow the four-string array at a depth of approximately 9 m (30 ft) and would tow the two-string array at a depth of 6 m (20 ft). The shot interval during seismometer acquisition would be approximately 65 seconds every 150 m (492 ft) and 22 seconds every 50 m (164 ft) during multi-channel acquisition operations. During acquisition, the airguns will emit a brief (approximately 0.1 second) pulse of sound and during the intervening periods of operations, the airguns are silent. The receiving system would consist of one 8-km (5-mi) hydrophone streamer which would receive the returning acoustic signals and transfer the data to the on-board processing system. In addition to the hydrophone, the study would also use approximately 90 seismometers placed on the seafloor to record the returning acoustic signals from the airgun array internally for later analysis.

Seismic Airguns

The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 220 in^3, with a firing pressure of 1,950 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz).

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and there is also a reduction in the amount of sound transmitted in the near horizontal direction. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun array on the *Langseth* range from 246 to 253 decibels (dB) re: 1 μPa (peak to peak). (We express sound pressure level as the ratio of a measured sound pressure and a reference pressure level. The commonly used unit for sound pressure is dB and the commonly used reference pressure level in underwater acoustics is 1 microPascal (μPa)). The effective source levels for horizontal propagation are lower than source levels for downward propagation and the relative sound intensities given in dB in water are not the same as relative sound intensities given in dB in air. We refer the reader to the Foundation's 2014 EA for this project and their 2011 Programmatic Environmental Impact Statement (PEIS) for a detailed description of the airguns and airgun configurations proposed for use in this study.

Ocean Bottom Seismometers

Lamont-Doherty proposes to place 90 seismometers on the sea floor prior to the initiation of the seismic survey. Each seismometer is approximately 0.9 m (2.9 ft) high with a maximum diameter of 97 centimeters (cm) (3.1 ft). An anchor, made of a rolled steel bar grate which measures approximately 7 by 91 by 91.5 cm (3 by 36 by 36 inches) and weighs 45 kilograms (99 pounds) would anchor the seismometer to the seafloor. We refer the reader to section 2.1.3.2 in the Foundation's 2011 PEIS for a detailed description of this passive acoustic recording system.

The *Endeavor* crew would deploy and retrieve the seismometers one-by-one from the stern of the vessel while onboard protected species observers will alert them to the presence of marine mammals and recommend ceasing deploying or recovering the seismometers to avoid potential entanglement with marine mammals.

Additional Acoustic Data Acquisition Systems

Multibeam Echosounder: The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13.0 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

Each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (in water less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-bottom Profiler: The *Langseth* will also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5 kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 μPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

Acoustic Doppler Current Profiler: Lamont-Doherty would measure currents using a Teledyne OS75 75-kilohertz (kHz) Acoustic Doppler current profiler (ADCP). The ADCP's configuration consists of a 4-beam phased array with a beam angle of 30°. The source level is proprietary information but has a maximum acoustic source level of 224 dB.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 in this notice provides the following: All marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); abundance; occurrence and seasonality in the activity area.

Lamont-Doherty presented species information in Table 2 of their application but excluded information on harbor seals and four other cetacean species because they anticipated that these species would have a more northerly distribution during the summer and thus would have a low

likelihood of occurring in the survey area. The excluded cetacean species include: Bryde's whale (*Balaenoptera edeni*), northern bottlenose whale (*Hyperoodon ampullatus*), Sowerby's beaked whale (*Mesoplodon bidens*), and the white-beaked dolphin (*Lagenorhynchus albirostris*).

Based on the best available information (DoN, 2012), we expect that Bryde's whale may have the potential to occur within the survey area and have included additional information for this species in Table 1 of this notice. However, we agree with Lamont-Doherty that the other species identified earlier have a low likelihood of occurrence in the action area during September and October.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN SEPTEMBER THROUGH OCTOBER, 2014

Species	Stock name	Regulatory status [1 2]	Stock/Species Abundance [3]	Range	Occurrence in summer/fall
North Atlantic right whale (*Eubalaena glacialis*).	Western Atlantic	MMPA–D, ESA–EN	455	Coastal/shelf	Uncommon.
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	MMPA–D, ESA–EN	823	Pelagic	Uncommon.
Minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast	MMPA–D, ESA–NL	20,741	Coastal/shelf	Uncommon.
Sei whale (*Balaenoptera borealis*).	Nova Scotia	MMPA–D, ESA–EN	357	Offshore	Rare.
Fin whale (*Balaenoptera physalus*).	Western North Atlantic	MMPA–D, ESA–EN	3,522	Pelagic	Rare.
Blue whale (*Balaenoptera musculus)*.	Western North Atlantic	MMPA–D, ESA–EN	[4] 440	Coastal/pelagic	Rare.
Bryde's whale (*Balaenoptera edeni*).	NA	MMPA–D, ESA–NL	[5] 11,523	Shelf/pelagic	Uncommon.
Sperm whale (*Physeter macrocephalus*).	Nova Scotia	MMPA–D, ESA–EN	2,288	Pelagic	Common.
Dwarf sperm whale (*Kogia sima*).	Western North Atlantic	MMPA–NC, ESA–NL	3,785	Off Shelf	Uncommon.
Pygmy sperm whale (*K. breviceps*).	Western North Atlantic	MMPA–NC, ESA–NL	3,785	Off Shelf	Uncommon.
Blainville's beaked whale (*Mesoplodon densirostris*).	Western North Atlantic	MMPA–NC, ESA–NL	7,092	Pelagic	Rare.
Cuvier's beaked whale (*Ziphius cavirostris*).	Western North Atlantic	MMPA–NC, ESA–NL	7,092	Pelagic	Uncommon.
Gervais' beaked whale (*M. europaeus*).	Western North Atlantic	MMPA–NC, ESA–NL	7,092	Pelagic	Rare.
True's beaked whale (*M. mirus*).	Western North Atlantic	MMPA–NC, ESA–NL	7,092	Pelagic	Rare.
Rough-toothed dolphin (*Steno bredanensis*).	Western North Atlantic	MMPA–NC, ESA–NL	271	Pelagic	Uncommon.
Bottlenose dolphin (*Tursiops truncatus*).	Western North Atlantic Offshore.	MMPA–NC, ESA–NL	77,532	Pelagic	Common.
	Western North Atlantic Southern Migratory Coastal.	MMPA–D, S, ESA–NL	9,173	Coastal	Common.
	WNA Southern NC Estuarine System.	MMPA–D, S, ESA–NL	188	Coastal	Common.
	WNA Northern NC Estuarine System.	MMPA–D, S, ESA–NL	950	Coastal	Common.
Pantropical spotted dolphin (*Stenella attenuata*).	Western North Atlantic	MMPA–NC, ESA–NL	3,333	Pelagic	Common.
Atlantic spotted dolphin (*S. frontalis*).	Western North Atlantic	MMPA–NC, ESA–NL	44,715	Shelf/slope pelagic	Common.
Spinner dolphin (*S. longirostris*).	Western North Atlantic	MMPA–NC, ESA–NL	[6] 11,441	Coastal/pelagic	Rare.
Striped dolphin (*S. coeruleoalba*).	Western North Atlantic	MMPA–NC, ESA–NL	54,807	Off shelf	Common.
Clymene dolphin (*S. clymene*).	Western North Atlantic	MMPA–NC, ESA–NL	[7] 6,086	Slope	Uncommon.
Short-beaked common dolphin (*Delphinus delphis*).	Western North Atlantic	MMPA–NC, ESA–NL	173,486	Shelf/pelagic	Common.
Atlantic white-sided-dolphin (*L. acutus*).	Western North Atlantic	MMPA–NC, ESA–NL	48,819	Shelf/slope	Rare.
Fraser's dolphin (*Lagenodelphis hosei*).	Western North Atlantic	MMPA–NC, ESA–NL	[8] 726	Pelagic	Rare.
Risso's dolphin (*Grampus griseus*).	Western North Atlantic	MMPA–NC, ESA–NL	18,250	Shelf/slope	Common.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN SEPTEMBER THROUGH OCTOBER, 2014—Continued

Species	Stock name	Regulatory status [1] [2]	Stock/Species Abundance [3]	Range	Occurrence in summer/fall
Melon-headed whale (*Peponocephala electra*).	Western North Atlantic	MMPA–NC, ESA–NL	[9] 2,283	Pelagic	Rare.
False killer whale (Pseudorca crassidens).	Northern Gulf of Mexico	MMPA–NC, ESA–NL	[10] 177	Pelagic	Rare.
Pygmy killer whale (*Feresa attenuate*).	Western North Atlantic	MMPA–NC, ESA–NL	[11] 1,108	Pelagic	Rare.
Killer whale (*Orcinus orca*)	Western North Atlantic	MMPA–NC, ESA–NL	[12] 28	Coastal	Rare.
Long-finned pilot whale (*Globicephala melas*).	Western North Atlantic	MMPA–NC, ESA–NL	26,535	Pelagic	Common.
Short-finned pilot whale (*G. macrorhynchus*).	Western North Atlantic	MMPA–NC, ESA–NL	21,515	Pelagic	Common.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	MMPA–NC, ESA–NL	79,883	Coastal	Rare.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2013 NMFS Stock Assessment Report (Waring *et al.,* 2014) unless otherwise noted. NA = Not Available.
[4] Minimum population estimate based on photo identification studies in the Gulf of St. Lawrence (Waring *et al.,* 2010).
[5] There is no stock designation for this species in the Atlantic. Abundance estimate derived from the ETP stock = 11,163 (Wade and Gerodette, 1993); Hawaii stock = 327 (Barlow, 2006); and Northern Gulf of Mexico stock = 33 (Waring *et al.,* 2012).
[6] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico Stock = 11,441 (Waring *et al.,* 2012).
[7] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 6,086 (CV=0.93) (Mullin and Fulling, 2003).
[8] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 726 (CV=0.70) for the Gulf of Mexico stock (Mullin and Fulling, 2004).
[9] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 2,283 (CV=0.76) for the Gulf of Mexico stock (Mullin, 2007).
[10] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 177 (CV=0.56) for the Gulf of Mexico stock (Mullin, 2007).
[11] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 152 (Mullin, 2007) and the Hawaii stock = 956 (Barlow, 2006).
[12] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 28 (Waring *et al.,* 2012).

NMFS refers the public to Lamont-Doherty's application, the Foundation's EA (see **ADDRESSES**), and the 2013 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ao2013_draft.pdf* for further information on the biology and local distribution of these species.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operations, vessel movement) impact marine mammals (via observations or scientific studies). This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies of animals exhibiting no reaction to sound or exhibiting barely perceptible avoidance behaviors). This discussion may also include reactions that we consider to rise to the level of a take.

We intend to provide a background of potential effects of Lamont-Doherty's activities in this section. This section does not consider the specific manner in which Lamont-Doherty would carry out the proposed activity, what mitigation measures Lamont-Doherty would implement, and how either of those would shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect Lamont-Doherty to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity would impact marine mammals. We will consider the content of the following sections: (1) Estimated Take by Incidental Harassment; (3) Proposed Mitigation; and (4) Anticipated Effects on Marine Mammal Habitat, to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

The functional groups applicable to this proposed survey and the associated frequencies are:

- Low frequency cetaceans (13 species of mysticetes): functional hearing estimates occur between approximately 7 Hertz (Hz) and 30 kHz (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Au *et al.,* 2006; Lucifredi

and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);

• Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing estimates occur between approximately 150 Hz and 160 kHz;

• High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of *cephalorhynchids*): functional hearing estimates occur between approximately 200 Hz and 180 kHz; and

• Pinnipeds in water: phocid (true seals) functional hearing estimates occur between approximately 75 Hz and 100 kHz (Hemila *et al.,* 2006; Mulsow *et al.,* 2011; Reichmuth *et al.,* 2013) and otariid (seals and sea lions) functional hearing estimates occur between approximately 100 Hz to 40 kHz.

As mentioned previously in this document, 24 marine mammal species (7 mysticetes and 17 odontocetes) would likely occur in the proposed action area. Table 2 presents the classification of these species into their respective functional hearing group. We consider a species' functional hearing group when we analyze the effects of exposure to sound on marine mammals.

TABLE 2—CLASSIFICATION OF MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN SEPTEMBER THROUGH OCTOBER, 2014 BY FUNCTIONAL HEARING GROUP (SOUTHALL *et. al.,* 2007)

Low frequency hearing range	North Atlantic right, humpback, Bryde's, minke, sei, fin, and blue whale.
Mid-frequency hearing range	Sperm whale, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, True's beaked whale, false killer whale, pygmy killer whale, killer whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, striped dolphin, Clymene dolphin, short-beaked common dolphin, Risso's dolphin, long-finned pilot whale, short-finned pilot whale.
High frequency hearing range	Harbor porpoise

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have also shown that marine mammals at distances of more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006) and (MacLean and Koski, 2005; Bain and Williams, 2006 for Dall's porpoises).

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir (2008) recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hour) for humpback and sperm whales according to the airgun array's operational status (i.e., active versus silent).

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

We expect that the masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds will be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales continue calling in the presence of seismic pulses, and that some researchers have heard these calls between the seismic pulses (e.g.,

Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, 2005b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies have found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Several studies have reported hearing dolphins and porpoises calling while airguns were operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example in one study, blue whales increased call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000).

Additionally, beluga whales change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.,* 1985; Lesage *et al.,* 1999; Scheifele *et al.,* 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are present in the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994).

Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004; Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2010; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Studies have noted directional hearing at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

• Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);

• Habitat abandonment due to loss of desirable acoustic environment; and

• Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that could potentially be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. There are less detailed data available for some other species of baleen whales and small toothed whales, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away from the area. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.,* 1995). They avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km (2.5 to 9.3 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in the Foundation's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (p-p). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several of Lamont-Doherty's seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa. However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). However, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales to seismic surveys. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast

(Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, 2007b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009 and reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2013). The western Pacific gray whale (*Eschrichtius robustus*) population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2013). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—There is little systematic information available about reactions of toothed whales to noise pulses. There are few studies on toothed whales similar to the more extensive baleen whale/seismic pulse work summarized earlier in this notice. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008, Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins and beluga whales (*Delphinapterus leucas)* exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya,

1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998).

Hearing Impairment

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

Researchers have studied temporary threshold shift in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of temporary threshold shift let alone permanent hearing damage, (i.e., permanent threshold shift, in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is complete recovery), can occur in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of the seismic survey, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and

California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic survey. Marine mammals generally avoid the immediate area around operating seismic vessels.

Non-auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, the pituitary hormones regulate virtually all neuroendocrine functions affected by stress—including immune competence, reproduction, metabolism, and behavior. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that are quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (e.g., elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and

Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, there are few data about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels are especially unlikely to incur non-auditory impairment or other physical effects.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance''.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

Lamont-Doherty would operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

We have considered the potential for behavioral responses such as stranding and indirect injury or mortality from Lamont-Doherty's use of the multibeam echosounder. In 2013, an International Scientific Review Panel (ISRP) investigated a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system (Southall *et al.,* 2013) associated with the use of a high-frequency mapping system. The report indicated that the use of a 12-kHz multibeam echosounder was the most plausible and likely initial behavioral trigger of the mass stranding event. This was the first time that a relatively high-frequency mapping sonar system had been associated with a stranding event. However, the report also notes that there were several site- and situation-specific secondary factors that may have contributed to the

avoidance responses that lead to the eventual entrapment and mortality of the whales within the Loza Lagoon system (e.g., the survey vessel transiting in a north-south direction on the shelf break parallel to the shore may have trapped the animals between the sound source and the shore driving them towards the Loza Lagoon). They concluded that for odontocete cetaceans that hear well in the 10–50 kHz range, where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts (Southall, *et al.,* 2013). However, the risk may be very low given the extensive use of these systems worldwide on a daily basis and the lack of direct evidence of such responses previously reported (Southall, *et al.,* 2013).

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During Lamont-Doherty's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The following section outlines possible effects of an echosounder on marine mammals.

Masking—Marine mammal communications would not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and strandings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those emitted by Lamont-Doherty's echosounder, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the echosounder proposed for use by the *Langseth* is quite different than sonar used for navy operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

Sub-bottom Profiler

Lamont-Doherty would also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause temporary threshold shift.

Masking—Marine mammal communications would not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Responses to the profiler are likely to be similar to the other pulsed sources discussed earlier if received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder.

Hearing Impairment and Other Physical Effects—It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals would move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. We discuss both scenarios here.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats),

scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts).

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 8.0 km (4.9 mi) of equipment and cables. This large size for the array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of entanglement due to slow speed of the survey vessel and onboard monitoring efforts. Lamont-Doherty has no recorded cases of entanglement of marine mammals during their conduct of over 10 years of seismic surveys (NSF, 2011).

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns. This section describes the potential impacts to marine mammal habitat from the specified activity.

Anticipated Effects on the Seafloor

The seismometers would occupy approximately 450 square meters (4,843.7 square miles) of seafloor habitat and may disturb benthic invertebrates. However, due to the natural sinking of the anchors from their own weight into the seafloor and natural sedimentation processes, these impacts would be localized and short-term. We do not expect any long-term habitat impacts.

Anticipated Effects on Fish

We consider the effects of the survey on marine mammal prey (i.e., fish and invertebrates), as a component of marine mammal habitat in the following subsections. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population. There have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

There are few data about the mechanisms and characteristics of damage impacting fish that by exposure to seismic survey sounds. Peer-reviewed scientific literature has presented few data on this subject. We are aware of only two papers with proper experimental methods, controls, and careful pathological investigation that implicate sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (i.e., the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

The National Park Service conducted an experiment of the effects of a single 700 in^3 airgun in Lake Meade, Nevada (USGS, 1999) to understand the effects of a marine reflection survey of the Lake Meade fault system (Paulson *et al.,* 1993, in USGS, 1999). The researchers suspended the airgun 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates, hired by USGS to monitor the effects of the surveys, concluded that airgun operations were not responsible for the death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on

recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet, Alaska. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. The Minerals Management Service noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary and also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions (Lokkeborg et al., 2012; Fewtrell and McCauley, 2012). We would expect prey species to return to their pre-exposure behavior once seismic firing ceased (Lokkeborg et al., 2012; Fewtrell and McCauley, 2012).

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale.

Moriyasu *et al.* (2004) and Payne *et al.* (2008) provide literature reviews of the effects of seismic and other underwater sound on invertebrates. The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of the 2011 PEIS (NSF/USGS, 2011).

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Tenera Environmental (2011) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes. Another laboratory study observed abnormalities in larval scallops after exposure to low frequency noise in tanks (de Soto et al., 2013).

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 ±5 dB re: 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Studies have noted primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of

crustaceans occurring several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The authors noted that crustaceans exhibited no behavioral impacts (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000). In other cases, the authors observed no behavioral impacts (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

In examining impacts to fish and invertebrates as prey species for marine mammals, we expect fish to exhibit a range of behaviors including no reaction or habituation (Peña et al., 2013) to startle responses and/or avoidance (Fewtrell & McCauley, 2012). We expect that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species. Although there is a potential for injury to fish or marine life in close proximity to the vessel, we expect that the impacts of the seismic survey on fish and other marine life specifically related to acoustic activities would be temporary in nature, negligible, and would not result in substantial impact to these species or to their role in the ecosystem. Based on the preceding discussion, we do not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Lamont-Doherty has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Protocols used during previous Foundation and Observatory-funded seismic research cruises as approved by us and detailed in the Foundation's 2011 PEIS and 2014 EA;

(2) Previous incidental harassment authorizations applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Lamont-Doherty, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Proposed exclusion zones;

(3) Power down procedures;

(4) Shutdown procedures;

(5) Ramp-up procedures; and

(6) Speed and course alterations.

We reviewed Lamont-Doherty's proposed mitigation measures and have proposed additional measures to effect the least practicable adverse impact on marine mammals. They are:

(1) Expanded shutdown procedures for North Atlantic right whales;

(2) Expanded exclusion zones in shallow water based on lower thresholds;

(3) Requirements on the directionality of the survey's tracklines.

Vessel-Based Visual Mitigation Monitoring

Lamont-Doherty would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Protected species observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (i.e., greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated 180-dB exclusion zone (with buffer).

During seismic operations, at least four protected species observers would be aboard the *Langseth.* Lamont-Doherty would appoint the observers with our concurrence and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, Lamont-Doherty would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50

Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

When the observers see marine mammals within or about to enter the designated exclusion zone, the *Langseth* would immediately power down or shutdown the airguns. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Proposed Exclusion Zones: Lamont-Doherty would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which they predicted the received sound levels (180 dB with buffer, 180 dB, and 160 dB) from the airgun arrays and a single airgun.

TABLE 3—MODELED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 177 DB RE: 1 μPA COULD BE RECEIVED DURING THE PROPOSED SURVEY IN THE ATLANTIC OCEAN, SEPTEMBER THROUGH OCTOBER, 2014.

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances [1] (m)		
			180 dB with buffer	180 dB	160 dB
Single bolt airgun (40 in^3)	6 or 9	< 100	121	86	938
		100–1,000	100	100	582
		> 1,000	100	100	388
18-Airgun array (3,300 in^3)	6	< 100	1,630 [2]	1,097 [2]	15,280 [2]
		100–1,000	675 [3]	675 [3]	5,640 [3]
		> 1,000	450	450	3,760
36-Airgun array (6,600 in^3)	9	< 100	2,880 [4]	2,060 [4]	22,600 [4]
		100–1,000	1,391	1,391	8,670
		> 1,000	927	927	5,780

[1] Predicted distances based on Table 1 of the Foundation's application. The Foundation calculated the 180-dB zone with 3-dB buffer based on our proposed recommendation to expand the 180-dB exclusion zones in shallow water.
[2] Predicted distances based on empirically-derived measurements in the Gulf of Mexico for an 18-airgun array.
[3] Intermediate Depth: Predicted distances based on model results with a correction factor (1.5) between deep and intermediate water depths.
[4] Predicted distances based on empirically-derived measurements in the Gulf of Mexico with scaling factor applied to account for differences in tow depth.

The 180-dB level shutdown criteria are applicable to cetaceans as specified by NMFS (2000). Lamont-Doherty used these levels to establish their original exclusion zones. For this survey, we will require Lamont-Doherty to enlarge the radius of 180-dB exclusion zones for each airgun array configuration in shallow water by a factor of 3-dB, which results in an exclusion zone that is 25 percent larger.

If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

Power Down Procedures—A power down involves decreasing the number of airguns in use such that the radius of the 180-dB exclusion zone (with buffer) is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in^3). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180-dB exclusion zone (with buffer) before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in^3 airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 3), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down—Following a power-down, the *Langseth* crew would not resume full airgun activity until the marine mammal has cleared the 180-dB exclusion zone (with buffer) (see Table 3). The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The *Langseth* crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

We estimate that the *Langseth* would transit outside the original 180-dB exclusion zone after an 8-minute wait period. This period is based on the 180-dB exclusion zone for the airgun subarray towed at a depth of 12 m (39.4

ft) in relation to the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures—The *Langseth* crew would shut down the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an observer sees the animal is initially within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for north Atlantic right whales, the *Langseth* crew would shut down the airgun(s) immediately in the unlikely event that observers detect this species, regardless of the distance from the vessel. The *Langseth* would only begin ramp-up would only if observers have not seen the north Atlantic right whale for 30 minutes.

Resuming Airgun Operations After a Shutdown—Following a shutdown in excess of eight minutes, the *Langseth* crew would initiate a ramp-up with the smallest airgun in the array (40-in^3). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. Lamont-Doherty would follow a ramp-up procedure when the airgun array begins operating after an 8-minute period without airgun operations or when shut down has exceeded that period. Lamont-Doherty has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, the Observatory would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, Lamont-Doherty would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. Lamont-Doherty would not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones.

Speed and Course Alterations

If during seismic data collection, Lamont-Doherty detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed and/or course can result in an extended period of time to realign onto the transect. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Directionality of Survey Tracklines

In order to avoid the potential entrapment of marine mammals within inshore areas, we proposed to require Lamont-Doherty to plan to conduct the seismic surveys (especially when near land) from the coast (inshore) and proceed towards the sea (offshore).

Mitigation Conclusions

We have evaluated Lamont-Doherty's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the

following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by us should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Lamont Doherty's proposed measures, as well as other measures considered by us, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area.

Lamont-Doherty submitted a marine mammal monitoring plan in section XIII of the Authorization application. We or Lamont-Doherty may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by us should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;
2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;
3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

Lamont-Doherty proposes to sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization. Lamont-Doherty understands that we would review the monitoring plan and may require refinements to the plan.

Lamont-Doherty planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, Lamont-Doherty is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical for them.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustic detect cetaceans.

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is

250 m (820.2 ft) long and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, which is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Pamguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the four visual observers. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which Lamont-Doherty must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where Lamont-Doherty would conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

Lamont-Doherty would submit a report to us and to the Foundation within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals and turtles near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the take to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;

- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586, within 24 hours of the discovery. Activities may continue while NMFS reviews the circumstances of the incident. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the airgun sub-arrays may have the potential to result in the behavioral disturbance of some marine mammals. Thus, we propose to authorize take by Level B harassment resulting from the operation of the sound sources for the proposed seismic survey based upon the current acoustic exposure criteria shown in Table 4.

TABLE 2—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).

Our practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). The 180-dB level shutdown criteria are applicable to cetaceans as specified by NMFS (2000). Lamont-Doherty used these levels to establish their original exclusion zones. For this survey, we will require Lamont-Doherty to enlarge the radius of 180-dB exclusion zones for each airgun array configuration in shallow water by a factor of 3-dB, which results in an exclusion zone that is 25 percent larger.

The probability of vessel and marine mammal interactions (i.e., ship strike) occurring during the proposed survey is unlikely due to the *Langseth's* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of seismic operations, the Langseth's cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist et al., 2001). In addition, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The *Langseth's* bridge offers good visibility to visually monitor for marine mammal presence; observers posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the observers receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea. Thus, we do not anticipate that take, by vessel strike, would result from the movement of the vessel.

Lamont-Doherty did not estimate any additional take allowance for animals that could be affected by sound sources other than the airgun. NMFS does not expect that the sound levels produced by the echosounder, sub-bottom profiler, and ADCP would exceed by the sound levels produced by the airguns during concurrent operations of the sound sources. Because of the beam pattern and directionality of these sources, combined with their lower source levels, it is not likely that these sources would take marine mammals independently from the takes that Lamont-Doherty has estimated to result from airgun operations. At this time, we propose not to authorize additional takes for these sources for the action. We are currently evaluating the broader use of these types of sources to determine under what specific circumstances coverage for incidental take would or would not be advisable. We are working on guidance that would outline a consistent recommended approach for applicants to address the potential impacts of these types of sources.

We considered the probability for entanglement of marine mammals to be low because of the vessel speed and the

monitoring efforts onboard the survey vessel. Lamont-Doherty has no recorded cases of entanglement of marine mammals during their conduct of over 10 years of seismic surveys. Therefore, we do not believe it is necessary to authorize additional takes for entanglement at this time.

There is no evidence that planned activities could result in serious injury or mortality within the specified geographic area for the requested Authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

The following sections describe Lamont-Doherty's methods to estimate take by incidental harassment. Lamont-Doherty based their estimates on the number of marine mammals that could be harassed by seismic operations with the airgun array during approximately 6,350 km (3,946 mi) of transect lines in the Atlantic Ocean.

Ensonified Area Calculations: In order to estimate the potential number of marine mammals exposed to airgun sounds, Lamont-Doherty considers the total marine area within the 160-dB radius around the operating airguns. This ensonified area includes areas of overlapping transect lines. They determine the ensonified area by entering the planned survey lines into a MapInfo GIS, using the software to identify the relevant areas by ''drawing'' the applicable 160-dB buffer (see Table 3) around each seismic line, and then calculating the total area within the buffers.

For this survey, Lamont-Doherty assumes that the *Langseth* will not need to repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey. They propose not to increase the proposed number of line-kilometers for the seismic operations by 25 percent to account for these contingency operations. The revised total ensonified area is approximately 41,170 km^2 (15,896 mi^2) a 36.4 percent reduction in the total ensonified area that Lamont-Doherty proposed in their application.

Exposure Estimates: Lamont-Doherty calculates the numbers of different individuals potentially exposed to approximately 160 dB re: 1 μPa by multiplying the expected species density estimates (number/km^2) for that area in the absence of a seismic program times the estimated area of ensonification (i.e., 41,170 km^2; 15,896 mi^2).

Table 3 of their application presents their original estimates of the number of different individual marine mammals that could potentially experience exposures greater than or equal to 160 dB re: 1 μPa during the seismic survey if no animals moved away from the survey vessel. Lamont-Doherty used the Strategic Environmental Research and Development Program's (SERDP) spatial decision support system (SDSS) Marine Animal Model Mapper tool (Read *et al.* 2009) to calculate cetacean densities within the survey area based on the U.S. Navy's ''OPAREA Density Estimates'' (NODE) model (DoN, 2007). The NODE model derives density estimates using density surface modeling of the existing line-transect data, which uses sea surface temperature, chlorophyll *a,* depth, longitude, and latitude to allow extrapolation to areas/seasons where marine mammal survey data collection did not occur. Lamont-Doherty used the SERDP SDSS tool to obtain mean densities in a polygon the size of the seismic survey area for the cetacean species during the fall (September through November).

For the proposed Authorization, we have reviewed Lamont-Doherty's take estimates presented in Table 3 of their application and have revised take calculations for some species based upon the best available density information from SERDP SDSS and other sources noted in the footnote section for Table 3. These include takes for North Atlantic right, fin, blue, Bryde's, and sei whales; and the Southern Migratory Coastal, Southern North Carolina Estuarine System, and Northern North Carolina Estuarine System stocks of bottlenose dolphins. Table 5 presents the revised estimates of the possible numbers of marine mammals exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed seismic survey.

TABLE 4—DENSITIES AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPa DURING THE PROPOSED SEISMIC SURVEY IN THE ATLANTIC OCEAN, SEPTEMBER THROUGH OCTOBER 2014

Species	Density estimate [1] (#/1000 sq km)	Modeled number of individuals exposed to sound levels ≥160 dB [2]	Proposed take authorization	Percent of species or stock [3]	Population trend [4]
North Atlantic right whale	Entire area—0.1 [5]	0	[5] 5	1.10	Increasing.
Humpback whale	0.73, 0.56, 1.06	38	38	4.62	Increasing.
Minke whale	0.03, 0.02, 0.04	1	1	0.005	No data.
Sei whale	Entire area—0.489 [5]	0	[5] 21	5.88	No data.
Fin whale	Entire area—0.26 [5]	1	[5] 11	0.31	No data.
Blue whale	Entire area—0.036 [5]	0	[5] 2	0.45	No data.
Bryde's whale	Entire area—0.429 [5]	0	[5] 18	0.16	No data.
Sperm whale	0.03, 0.68, 3.23	91	91	5.71	No data.
Dwarf sperm whale	0.64, 0.49, 0.93	33	33	0.87	No data.
Pygmy sperm whale	0.64, 0.49, 0.93	33	33	0.87	No data.
Cuvier's beaked whale	0.01, 0.14, 0.58	17	17	0.24	No data.
Blainville's beaked whale	0.01, 0.14, 0.58	17	17	0.24	No data.
Gervais' beaked whale	0.01, 0.14, 0.58	17	17	0.24	No data.
True's beaked whale	0.01, 0.14, 0.58	17	17	0.24	No data.
Rough-toothed dolphin	0.30, 0.23, 0.44	16	16	5.90	No data.
Bottlenose dolphin (Offshore)	70.4, 331, 49.4	3,383	3,383	4.36	No data.
Bottlenose dolphin (SMC)	70.4, 0, 0	685	685	7.05	No data.
Bottlenose dolphin (SNCES)	70.4, 0, 0	[6] 1	1	0.53	No data.
Bottlenose dolphin (NNCES)	70.4, 0, 0	[6] 1	1	0.11	No data.
Pantropical spotted dolphin	14, 10.7, 20.4	737	737	22.11	No data.
Atlantic spotted dolphin	216.5, 99.7, 77.4	4,632	4,632	10.36	No data.

TABLE 4—DENSITIES AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPa DURING THE PROPOSED SEISMIC SURVEY IN THE ATLANTIC OCEAN, SEPTEMBER THROUGH OCTOBER 2014—Continued

Species	Density estimate [1] (#/1000 sq km)	Modeled number of individuals exposed to sound levels ≥160 dB [2]	Proposed take authorization	Percent of species or stock [3]	Population trend [4]
Spinner dolphin	0, 0, 0	0	0	0	No data.
Striped dolphin	0, 0.4, 3.53	98	98	0.18	No data.
Clymene dolphin	6.7, 5.12, 9.73	352	352	5.78	No data.
Short-beaked common dolphin	5.8, 138.7, 26.4	1,343	1,343	0.77	No data.
Atlantic white-sided dolphin	0, 0, 0	0	0	0	No data.
Fraser's dolphin	0, 0, 0	0	0	0	No data.
Risso's dolphin	1.18, 4.28, 2.15	88	88	0.48	No data.
Melon-headed whale	0, 0, 0	0	0	0	No data.
False killer whale	0, 0, 0	0	0	0	No data.
Pygmy killer whale	0, 0, 0	0	0	0	No data.
Killer whale	0, 0, 0	0	0	0	No data.
Long-finned pilot whale	3.74, 58.9, 19.1	799	799	3.01	No data.
Short-finned pilot whale	3.74, 58.9, 19.1	799	799	3.71	No data.
Harbor porpoise	0, 0, 0	0	0	0	No data.

[1] Except where noted, densities are the mean values for the shallow (<100 m), intermediate (100–1,000 m), and deep (≤1,000 m) water stratum in the survey area calculated from the SERDP SDSS NODES summer model (Read *et al.,* 2009) as presented in Table 3 of Lamont-Doherty's application.

[2] Modeled take in this table corresponds to the total modeled take over all depth ranges shown in Table 3 of Lamont-Doherty's application. See Table 3 of their application for their original take estimates by shallow, intermediate, and deep strata. See the addendum to their application for revised take estimates based on modifications to the tracklines to reduce the total ensonified area by 36.4 percent (i.e., 41,170 km^2; 15,896 mi^2).

[3] Table 1 in this notice lists the stock species abundance estimates used in calculating the percentage of species/stock.

[4] Population trend information from Waring *et al.,* 2013. No data = Insufficient data to determine population trend.

[5] Density data derived from the Navy's NMSDD. Increases for group size based on pers. com. with Dr. Caroline Good (2014) and Mr. McLellan (2014) on large whale presence offshore NC.

[6] Modeled estimate includes the area that is less than 3 km from shore ensonified to greater than or equal to 160 dB (10 km^2 total).

Encouraging and Coordinating Research

Lamont-Doherty would coordinate the planned marine mammal monitoring program associated with the seismic survey in the Atlantic Ocean with applicable U.S. agencies.

Analysis and Preliminary Determinations

Negligible Impact

As explained previously, we have defined the term ''negligible impact'' to mean ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (i.e., population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, and the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, Lamont-Doherty's specified activities are not likely to cause long-term behavioral disturbance, permanent threshold shift, or other non-auditory injury, serious injury, or death. They include:

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due to avoidance of the area.
- The likelihood that marine mammals approaching the survey area will likely be traveling through or opportunistically foraging within the vicinity. Marine mammals transiting within the vicinity of survey operations will be transient as no breeding, calving, pupping, or nursing areas, or haul-outs, overlap with the survey area.
- The low likelihood that North Atlantic right whales would be exposed to sound levels greater than or equal to 160 dB re: 1 μPa due to the requirement that the Langseth crew must shutdown the airgun(s) immediately if observers detect this species, at any distance from the vessel.
- The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the

survey area during the operation of the airgun(s) to avoid acoustic harassment;

- Our expectation that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and the potential impacts to marine mammal habitat minimal;
- The relatively low potential for temporary or permanent hearing impairment and the likelihood that Lamont-Doherty would avoid this impact through the incorporation of the required monitoring and mitigation measures (including power-downs and shutdowns); and
- The likelihood that marine mammal detection ability by trained visual observers is high at close proximity to the vessel.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the Observatory's proposed activities, and NMFS does not propose to authorize injury, serious injury, or mortality at this time. We anticipate only behavioral disturbance to occur primarily in the form of avoidance behavior to the sound source during the conduct of the survey activities. Further, the additional mitigation measure requiring Lamont-Doherty to increase the size of the Level A harassment exclusion zones in shallow water will effect the least practicable impact marine mammals.

Table 5 in this document outlines the number of requested Level B harassment takes that we anticipate as a result of these activities. NMFS anticipates that 24 marine mammal species (7 mysticetes and 17 odontocetes) would likely occur in the proposed action area. Of the marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA and depleted under the MMPA, including: The North Atlantic, blue, fin, humpback, sei, and sperm whales.

Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. In addition, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat, including the identified habitats for North Atlantic right whales and their calves.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 30 days. Specifically, the airgun array moves continuously over 10s of kilometers daily, as do the animals, making it unlikely that the same animals would be continuously exposed over multiple consecutive days. Additionally, the seismic survey would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

In summary, we expect marine mammals to avoid the survey area, thereby reducing the risk of exposure and impacts. We do not anticipate disruption to reproductive behavior and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals. Based on this notice's analysis of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that Lamont-Doherty's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, we estimate that Lamont-Doherty's activities could potentially affect, by Level B harassment only, 24 species of marine mammals under our jurisdiction. For each species, these estimates constitute small numbers relative to the population size. We have provided the population estimates for the marine mammal species that may be taken by Level B harassment in Table 5 in this notice. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that Lamont-Doherty's proposed activity would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species that may occur in the proposed survey area, several are listed as endangered under the Endangered Species Act, including the blue, fin, humpback, north Atlantic right, sei, and sperm whales. Under section 7 of the ESA, the Foundation has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) will also consult internally with NMFS on the proposed issuance of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS and the Foundation will conclude the consultation prior to a determination on the issuance of the Authorization.

National Environmental Policy Act (NEPA)

The Foundation has prepared a draft EA titled ''Draft Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off Cape Hatteras, September–October 2014'' which we have posted on our Web site concurrently with the publication of this notice. We will independently evaluate the Foundation's draft EA and determine whether or not to adopt it or prepare a separate NEPA analysis and incorporate relevant portions of the Foundation's draft EA by reference. We will review all comments submitted in response to this notice to complete the NEPA process prior to making a final decision on the Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes issuing an Authorization to Lamont-Doherty for conducting a seismic survey in the Atlantic Ocean offshore Cape Hatteras, NC September 15, 2014 through October 31, 2014, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Draft Proposed Authorization

This section contains the draft text for the proposed Authorization. NMFS proposes to include this language in the Authorization if issued.

Incidental Harassment Authorization

We hereby authorize the Lamont-Doherty Earth Observatory (Lamont-Doherty), Columbia University, P.O. Box 1000, 61 Route 9W, Palisades, New York 10964–8000, under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to incidentally harass small numbers of marine mammals incidental to a marine geophysical survey conducted by the R/V *Marcus G. Langseth* (*Langseth*) marine geophysical survey in the Atlantic Ocean offshore Cape Hatteras, NC September through October, 2014.

1. Effective Dates

This Authorization is valid from September 15 through October 31, 2014.

2. Specified Geographic Region

This Authorization is valid only for specified activities associated with the R/V Marcus G. Langseth's (*Langseth*) seismic operations as specified in Lamont-Doherty's Incidental Harassment Authorization (Authorization) application and environmental analysis in the following specified geographic area:

a. In the Atlantic Ocean bounded by the following coordinates: in the Atlantic Ocean, approximately 17 to 422 kilometers (km) (10 to 262 miles (mi)) off the coast of Cape Hatteras, NC between approximately 32–37° N and approximately 71.5–77° W, as specified in Lamont-Doherty's application and the National Science Foundation's EA.

3. Species Authorized and Level of Takes

a. This authorization limits the incidental taking of marine mammals, by Level B harassment only, to the species listed in Table 5 of this notice in the area described in Condition 2(a):

i. During the seismic activities, if the Holder of this Authorization encounters any marine mammal species that are not listed in Condition 3 for authorized taking and are likely to be exposed to sound pressure levels greater than or equal to 160 decibels (dB) re: 1 μPa, then the Holder must alter speed or course or shut-down the airguns to avoid take.

b. This Authorization prohibits the taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3 or the taking of any kind of any other species of marine mammal. Thus, it may result in the modification, suspension or revocation of this Authorization.

c. This Authorization limits the methods authorized for taking by Level B harassment to the following acoustic sources without an amendment to this Authorization:

i. an airgun array with a total capacity of 6,600 in^3 (or smaller);

ii. a multi-beam echosounder;

iii. a sub-bottom profiler; and

iv. an acoustic Doppler current profiler.

4. Reporting Prohibited Take

The Holder of this Authorization must report the taking of any marine mammal in a manner prohibited under this Authorization immediately to the Office of Protected Resources, National Marine Fisheries Service, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov.*

5. Cooperation

We require the Holder of this Authorization to cooperate with the Office of Protected Resources, National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

6. Mitigation and Monitoring Requirements

We require the Holder of this Authorization to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable adverse impact on affected marine mammal species or stocks:

Visual Observers

a. Utilize two, National Marine Fisheries Service-qualified, vessel-based Protected Species Visual Observers (visual observers) to watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from civil twilight-dawn to civil twilight-dusk) and before and during start-ups of airguns day or night.

i. At least one visual observer will be on watch during meal times and restroom breaks.

ii. Observer shifts will last no longer than four hours at a time.

iii. Visual observers will also conduct monitoring while the *Langseth* crew deploy and recover the airgun array and streamers from the water.

iv. When feasible, visual observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavioral reactions during, between, and after airgun operations.

v. The *Langseth's* vessel crew will also assist in detecting marine mammals, when practicable. Visual observers will have access to reticle binoculars (7×50 Fujinon), and big-eye binoculars (25×150).

Exclusion Zones

b. Establish a 180-dB exclusion zone (with buffer) before starting the airgun subarray (6,600 in^3 or smaller); and a 180-dB exclusion zone (with buffer) for the single airgun (40 in^3). Observers will use the predicted radius distance for the 180-dB exclusion zone (with buffer).

Visual Monitoring at the Start of Airgun Operations

c. Monitor the entire extent of the zones for at least 30 minutes (day or night) prior to the ramp-up of airgun operations after a shutdown.

d. Delay airgun operations if the visual observer sees a cetacean within the 180-dB exclusion zone (with buffer) until the marine mammal(s) has left the area.

i. If the visual observer sees a marine mammal that surfaces, then dives below the surface, the observer shall wait 30 minutes. If the observer sees no marine mammals during that time, he/she should assume that the animal has moved beyond the 180-dB exclusion zone (with buffer).

ii. If for any reason the visual observer cannot see the full 180-dB exclusion zone (with buffer) for the entire 30 minutes (*i.e.,* rough seas, fog, darkness), or if marine mammals are near, approaching, or within zone, the *Langseth* may not resume airgun operations.

iii. If one airgun is already running at a source level of at least 180 dB re: 1 μPa, the *Langseth* may start the second gun–and subsequent airguns–without observing relevant exclusion zones for 30 minutes, provided that the observers have not seen any marine mammals near the relevant exclusion zones (in accordance with Condition 6(b)).

Passive Acoustic Monitoring

e. Utilize the passive acoustic monitoring (PAM) system, to the maximum extent practicable, to detect and allow some localization of marine mammals around the *Langseth* during all airgun operations and during most periods when airguns are not operating. One visual observer and/or bioacoustician will monitor the PAM at all times in shifts no longer than 6 hours. A bioacoustician shall design and set up the PAM system and be present to operate or oversee PAM, and available when technical issues occur during the survey.

f. Do and record the following when an observer detects an animal by the PAM:

i. notify the visual observer immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

ii. enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

Ramp-Up Procedures

g. Implement a ''ramp-up'' procedure when starting the airguns at the beginning of seismic operations or anytime after the entire array has been shutdown, which means start the smallest gun first and add airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period. During ramp-up, the observers will monitor the exclusion zone, and if marine mammals are sighted, a course/speed alteration, power-down, or shutdown will be implemented as though the full array were operational.

Recording Visual Detections

h. Visual observers must record the following information when they have sighted a marine mammal:

i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

ii. Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and

iii. The data listed under 6(f)(ii) at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

Speed or Course Alteration

i. Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, the Holder of this Authorization will implement further mitigation measures, such as a shutdown.

Power-Down Procedures

j. Power down the airguns if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zones. A power-down means reducing the number of operating airguns to a single operating 40 in^3 airgun. This would reduce the exclusion zone to the degree that the animal(s) is outside of it.

Resuming Airgun Operations After a Power-Down

k. Following a power-down, if the marine mammal approaches the smaller designated exclusion zone, the airguns must then be completely shut-down. Airgun activity will not resume until the observer has visually observed the marine mammal(s) exiting the exclusion zone and is not likely to return, or has not been seen within the exclusion zone for 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

l. Following a power-down and subsequent animal departure, the *Langseth* may resume airgun operations at full power. Initiation requires that the observers can effectively monitor the full exclusion zones described in Condition 6(b). If the observer sees a marine mammal within or about to enter the relevant zones then the *Langseth* will implement a course/speed alteration, power-down, or shutdown.

Shutdown Procedures

m. Shutdown the airgun(s) if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zone. A shutdown means that the *Langseth* turns off all operating airguns.

n. If a North Atlantic right whale (*Eubalaena glacialis*) is visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 minutes after the last documented whale visual sighting.

Resuming Airgun Operations After a Shutdown

o. Following a shutdown, if the observer has visually confirmed that the animal has departed the 180-dB exclusion zone (with buffer) within a period of less than or equal to 8 minutes after the shutdown, then the *Langseth* may resume airgun operations at full power.

p. Else, if the observer has not seen the animal depart the 180-dB exclusion zone (with buffer), the *Langseth* shall not resume airgun activity until 15 minutes has passed for species with shorter dive times (*i.e.,* small odontocetes and pinnipeds) or 30 minutes has passed for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). The *Langseth* will follow the ramp-up procedures described in Conditions 6(g).

Survey Operations

q. The *Langseth* may continue marine geophysical surveys into night and low-light hours if the Holder of the Authorization initiates these segment(s) of the survey when the observers can view and effectively monitor the full relevant exclusion zones.

r. This Authorization does not permit the Holder of this Authorization to initiate airgun array operations from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the visual observers cannot view and effectively monitor the full relevant exclusion zones.

s. To the maximum extent practicable, the Holder of this Authorization should schedule seismic operations (*i.e.,* shooting the airguns) during daylight hours.

t. To the maximum extent practicable, plan to conduct seismic surveys (especially when near land) from the coast (inshore) and proceed towards the sea (offshore) in order to avoid trapping marine mammals in shallow water.

Mitigation Airgun

u. The *Langseth* may operate a small-volume airgun (*i.e.,* mitigation airgun) during turns and maintenance at approximately one shot per minute. The *Langseth* would not operate the small-volume airgun for longer than three hours in duration during turns. During turns or brief transits between seismic tracklines, one airgun would continue to operate.

7. Reporting Requirements

This Authorization requires the Holder of this Authorization to:

a. Submit a draft report on all activities and monitoring results to the Office of Protected Resources, National Marine Fisheries Service, within 90 days of the completion of the *Langseth's* cruise. This report must contain and summarize the following information:

i. Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings;

ii. Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of shutdowns), observed throughout all monitoring activities.

iii. An estimate of the number (by species) of marine mammals with known exposures to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa for cetaceans and a discussion of any specific behaviors those individuals exhibited.

iv. An estimate of the number (by species) of marine mammals with estimated exposures (based on modeling results) to the seismic activity at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa with a discussion of the nature of the probable consequences of that exposure on the individuals.

v. A description of the implementation and effectiveness of the: (A) terms and conditions of the Biological Opinion's Incidental Take Statement; and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report will confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act listed marine mammals.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, within 30 days after receiving comments from us on the draft report. If we decide that the draft report needs no comments, we will consider the draft report to be the final report.

8. Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the take to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

9. Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal Unrelated to the Activities

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southeast Regional Stranding Coordinator at (305) 361–4586, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

11. Endangered Species Act Biological Opinion and Incidental Take Statement

The Observatory is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to the Endangered Species Act Biological Opinion issued to the National Science Foundation and NMFS' Office of Protected Resources, Permits and Conservation Division. A copy of this Authorization and the Incidental Take Statement must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

We request comments on our analysis and the draft authorization proposed Authorization for Lamont-Doherty's activities. Please include any supporting data or literature citations with your comments to help inform our final decision on Lamont-Doherty's request for an Incidental Harassment Authorization.

Dated: July 25, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–17998 Filed 7–30–14; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0017; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AZ80

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2014–15 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This proposed rule also provides the final regulatory alternatives for the 2014–15 duck hunting seasons.

DATES: *Comments:* You must submit comments on the proposed early-season frameworks by August 11, 2014.

Meetings: The Service Migratory Bird Regulations Committee (SRC) will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2014 spring/summer migratory bird subsistence seasons in Alaska on July 30–31, 2014. All meetings will commence at approximately 8:30 a.m.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2014–0017.
- *U. S. Mail or Hand Delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2014–0017; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Review of Public Comments section below for more information).

Meetings: The Service Migratory Bird Regulations Committee (SRC) will meet at the Holiday Inn Arlington at Ballston, 4610 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2014

On April 30, 2014, we published in the **Federal Register** (79 FR 24512) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2014–15 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 30 proposed rule.

Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Those headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black Ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled Ducks
   viii. Wood Ducks
   ix. Youth Hunt
   x. Mallard Management Units
   xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-Fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-Tailed Pigeons
16. Mourning Doves
17. White-Winged and White-Tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 4, 2014, we published in the **Federal Register** (79 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 4 supplement also provided detailed information on the 2014–15 regulatory schedule and announced the SRC and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the regulatory alternatives for the 2014–15 duck hunting seasons. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2014–15 season.

We have considered all pertinent comments received through June 27, 2014, on the April 30 and June 4, 2014, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 16, 2014.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 25–26, 2014, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2014–15 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 30–31, 2014, meetings will review information on the current status of waterfowl and develop recommendations for the 2014–15

regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of waterfowl breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Spring was delayed even later than last year across most of the survey area. Habitat conditions during the survey were mostly improved or similar to last year, due to average to above-average annual precipitation. The exceptions were west-central Alberta and east of James Bay in Quebec. Alaska was the only region that experienced an early spring. The total pond estimate (Prairie Canada and United States combined) was 7.2 ± 0.2 million which was similar to the 2013 estimate of 6.9 ± 0.2 million and 40 percent above the long-term average of 5.1 ± 0.03 million.

Traditional Survey Area (U.S. and Canadian Prairies and Parklands)

In the traditional survey area, the majority of the Canadian prairies had below to well-below-average winter temperatures and average precipitation. Southern Manitoba benefitted from last year's summer and fall precipitation, whereas southern Saskatchewan and most of Alberta were aided by spring 2014 precipitation. The 2014 estimate of ponds in Prairie Canada was 4.6 ± 0.2 million. This estimate was similar to the 2013 estimate (4.6 ± 0.2 million) and 33 percent above the 1961–2013 average (3.5 ± 0.03 million). The Parklands remained in good condition from previous years' carry-over water, and the boreal region has benefitted from above-average annual precipitation. Most of the Canadian portion of the traditional survey area was rated as good or excellent this year, and the region continued to receive additional precipitation after the survey.

Much of the U.S. prairies had average winter precipitation and well-below-average winter temperatures that continued into spring. Habitat conditions improved in the western Dakotas and Montana from 2013 but remained similar in the eastern Dakotas. The 2014 pond estimate for the northcentral United States was 2.6 ± 0.1 million which was similar to the 2013 estimate (2.3 ± 0.1 million) and 53 percent above the 1974–2013 average (1.7 ± 0.02 million). Waterfowl habitat in North Dakota remains under pressure from wetland drainage, loss of Conservation Reserve Program grasses, and energy development.

Eastern Survey Area

Winter and spring temperatures in the eastern survey area were also well below normal with most areas receiving average to above-average precipitation. Habitat conditions were similar to 2013 or improved, particularly in the northeastern United States. An exception was the area east of James Bay in Quebec, which has experienced dry conditions and extensive wildfires. Less flooding was noted across the eastern survey area, in contrast to some years, and continued cool, damp spring conditions in the Maritimes could limit waterfowl production.

Status of Teal

The estimate of blue-winged teal from the traditional survey area is 8.5 million. This count was similar to 2013, and is 75 percent above the 1955–2013 average.

Sandhill Cranes

The annual indices to abundance of Mid-Continent Population (MCP) sandhill cranes have been relatively stable since 1982, and slightly increasing over the last few years. The preliminary spring 2014 index for sandhill cranes in the Central Platte River Valley (CPRV), Nebraska, uncorrected for visibility bias, was 444,144 birds. This estimate is significantly lower than that of last year, but 30 percent above the long-term average. The photo-corrected, 3-year average for 2011–13 was 563,167, which is above the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2013–14. Estimates of hunter activity and harvest were not available for all areas at the time of this report. However, preliminary estimates suggest approximately 9,000–10,000 hunters in the U.S. portion of the Central Flyway participated in these seasons, which was about 30 percent higher than the number that participated in the previous season. Those hunters harvested around 20,000 MCP cranes during the 2013–14 seasons, which was 34 percent higher than the harvest for the previous year and 36 percent higher than the long-term average. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Minnesota, Alaska, Canada, and Mexico combined) was about 14,000 during 2013–14. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 38,104 birds, which was a 36 percent increase from the previous year's estimate. The long-term (1982–2012) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2013 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 20,360 cranes. The 3-year average was 17,757 sandhill cranes, which is within the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2013–14 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a harvest of 678 RMP cranes, a 40 percent decrease from the previous year's harvest.

The Lower Colorado River Valley Population (LCRVP) survey results indicated a 9 percent increase from 3,078 birds in 2013, to 3,353 birds in 2014. The 3-year average is 3,026 LCRVP cranes, which is above the population objective of 2,500.

The Eastern Population (EP) sandhill crane fall survey index (64,322) decreased by 27 percent in 2013, and the 3-year average for the survey is 74,784 cranes. Over the last 3 seasons, Kentucky has harvested an average of 80 birds per year from this population. Tennessee held its first hunting season on these birds last year, and harvested 350 cranes.

Woodcock

The American woodcock (*Scolopax minor*) is managed as two management regions, the Eastern and the Central. Singing-ground and Wing-collection Surveys were conducted to assess population status. The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2014 indicate that the number of singing male woodcock per route in the Eastern Management Region was unchanged from 2013, while it was 7.3 percent lower in the Central Management Region. There were significant, declining 10-year trends in woodcock heard for both the Eastern and Central Management Regions during 2004–2014, which marks the first time in 10 years that the 10-year trend for the Eastern Region has been significant and the first time in 3 years that the 10-year trend has been significant in the Central Region. Both management regions have a long-term (1968–2014) declining trend (−1.0 percent per year in the Eastern Management Region and −0.9 percent per year in the Central Management Region).

The Wing-collection Survey provides an index to recruitment. Data from this survey indicate that the 2013 recruitment index for the U.S. portion of the Eastern Region (1.60 immatures per adult female) was 3.2 percent less than the 2012 index, and 2.3 percent less than the long-term (1963–2012) average. The recruitment index for the U.S. portion of the Central Region (1.54 immatures per adult female) was 7.2 percent less than the 2012 index and 1.4 percent less than the long-term (1963–2012) average.

Band-Tailed Pigeons

Two subspecies of band-tailed pigeon occur north of Mexico, and are managed as two separate populations: Interior and Pacific Coast. Information on the abundance and harvest of band-tailed pigeons is collected annually in the United States and British Columbia. Abundance information comes from the Breeding Bird Survey (BBS) and the Mineral Site Survey (MSS, specific to the Pacific Coast Population). Harvest and hunter participation are estimated from the Migratory Bird Harvest Information Program (HIP). The BBS provided evidence that the abundance of Pacific Coast band-tailed pigeons decreased (−2.0 percent per year) over the long term (1968–2013). Trends in abundance during the recent 10- and 5-year periods were inconclusive for both the BBS and MSS. An estimate of hunters and harvest were not available for 2013, but 3,900 hunters harvested 10,900 birds in 2012.

For Interior band-tailed pigeons, the BBS provided evidence that abundance decreased (−5.6 percent per year) over the long term (1968–2013). Trends in abundance during the recent 10- and 5-year periods were inconclusive. An estimated 1,000 hunters harvested 1,600 pigeons in 2013.

Mourning Doves

Doves in the United States are managed in three management units, Eastern (EMU), Central (CMU), and Western (WMU). We annually summarize information collected in the United States on survival, recruitment, abundance and harvest of mourning doves. We report on trends in the number of doves heard and seen per route from the all-bird BBS, and provide absolute abundance estimates based on band recovery and harvest data. Harvest and hunter participation are estimated from the HIP.

At this time 2013 harvest information and abundance estimates are not available. Estimates of absolute abundance are available only since 2003, and indicate that there are about 349 million doves in the United States, and annual abundance during the recent 5 years appears stationary in the Eastern Management Unit (EMU) and WMU, but may be declining in the CMU. However, abundance appeared to increase between 2011 and 2012 in the CMU and WMU.

The most recent HIP estimates available (2012) for mourning dove total harvest, active hunters, and total days afield in the United States were 14,490,800 birds, 828,900 hunters, and 2,538,000 days afield. Harvest and hunter participation at the unit level were: EMU, 6,279,900 birds, 349,600 hunters, and 1,015,600 days afield; CMU, 6,361,600 birds, 338,700 hunters, and 1,108,700 days afield; and WMU, 1,849,400 birds, 140,700 hunters, and 413,700 days afield.

Review of Public Comments

The preliminary proposed rulemaking (April 30 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2014–15 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 30 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which we received written comments are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 30 **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the April 30 **Federal Register**, we intend to continue use of Adaptive Harvest Management (AHM) to help determine appropriate duck-hunting regulations for the 2014–15 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards and their breeding habitat (i.e., abundance of ponds) (special hunting restrictions are enacted for certain species, such as canvasbacks, black ducks, scaup, and pintails).

Regarding the Mississippi Flyway Council recommendation to limit regulatory changes to one step per year, we noted in the May 2013 release of the

SEIS on sport hunting and associated Record of Decision (78 FR 45385) that any recommendations for changes such as the inclusion of a one-step constraint should be considered within the context of the process that is being used to revise current AHM protocols. As AHM decision-making frameworks for mid-continent mallards are modified in the upcoming revision process, regulatory alternatives should be crafted by the Flyways in the context of those changes, including revised harvest management objectives and the demographic models that predict changes in waterfowl status due to those regulations. We look forward to working with the Flyway Councils in this exercise.

We will propose a specific regulatory alternative for each of the Flyways during the 2014–15 season after survey information becomes available later this summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.*

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2013–14.

Service Response: The regulatory alternatives proposed in the April 30 **Federal Register** will be used for the 2014–15 hunting season (see accompanying table at the end of this proposed rule for specifics). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed during the late-season regulations process. For those species with specific harvest strategies (canvasbacks, pintails, black ducks, and scaup), those strategies will again be used for the 2014–15 hunting season.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Mississippi Flyway Council recommended that Iowa, Minnesota, Michigan, and Wisconsin be granted special September teal hunting seasons for an experimental 3-year period beginning in September 2014. The Council recommended that the framework for these seasons follow the established teal harvest strategy (i.e., 9 or 16 days with up to 6 bird daily limits) with sunrise to sunset shooting hours. Further, they recommended that the Service work with these States to develop a mutually acceptable evaluation plan prior to June 2014. In the event that this recommendation is not approved or Iowa declines the opportunity, the Council recommended that Iowa be allowed to retain their early September duck season.

The Central Flyway Council recommended allowing an experimental September teal season in the portion of Nebraska not currently open to September teal hunting. Criteria for the experimental season would be the same as for other non-production States, and the State of Nebraska will work with the Service to develop an evaluation plan for the experiment.

Service Response: We appreciate the long-standing interest by the Flyway Councils to pursue additional teal harvest opportunity. With this interest in mind, in 2009, the Flyways and Service began to assess the collective results of all teal harvest, including harvest during special September seasons. The Teal Harvest Potential Working Group conducted this assessment work, which included a thorough assessment of the harvest potential for both blue-winged and green-winged teal, as well as an assessment of the impacts of current special September seasons on these two species. Cinnamon teal were subsequently included in this assessment.

In the April 9, 2013, **Federal Register**, we stated that the final report of the Teal Harvest Potential Working Group (*http://www.fws.gov/migratorybirds/NewReportsPublications/Teal/Final%20Teal%20Assessment%20Report%20Mar%2012%202013.pdf*) indicated that additional opportunity could be provided for blue-winged teal and green-winged teal. Therefore, last year, we supported recommendations from the Atlantic, Mississippi, and Central Flyway Councils to increase the daily bag limit from 4 to 6 teal in the aggregate during the Special September teal season in 2013–14. However, at that time, we did not support additional changes to the structure of the September teal season until specific management objectives for teal had been articulated and a comprehensive, cross-flyway approach to developing and evaluating other potential avenues by which additional teal harvest opportunity could be provided had been completed. We recognized, however, that this comprehensive approach could include addition of new hunting seasons (e.g., September teal seasons in northern States) as well as expanded hunting opportunities (e.g., season lengths, bag limits) in States with existing teal seasons.

After the February SRC meeting, in the April 30, 2014, **Federal Register** (79 FR 24518), we indicated that we were willing to consider proposals to conduct experimental September teal seasons in production States if fully evaluated for impacts to teal and non-target species. Thus, we agree with the Mississippi Flyway Council's recommendation to allow an experimental special September teal season in Minnesota, Wisconsin, Michigan, and Iowa, and the Central Flyway Council's recommendation to allow an experimental season in the production area of Nebraska (generally north of the Platte River). During the 3-year experiment, a 16-day season with a 6-teal daily bag limit will be offered if the blue-winged teal population estimate from the traditional survey area (i.e., strata 1–18, 20–50, and 75–77) is >4.7 million birds, and a 9-day season will be offered when the blue-winged teal estimate is between 3.3 and 4.7 million birds. We will work with the five affected States to develop evaluation plans and associated memoranda of agreement (MOA) for these experiments. The plan will consist of a 3-year evaluation of hunter performance (via spy blind studies) with regard to attempt rates on non-target species during the experimental September teal season.

Before the season is approved operationally, the participating States must demonstrate negligible impacts to non-target species, defined as a non-target attempt rate no greater than 0.25 and non-target kill rate no greater than 0.10. The season will not be approved for operational status if the experiment determines that (1) the upper 90 percent confidence limit on the attempt rate at non-target species exceeds 0.25, or (2) the kill of non-target species exceeds 10 percent of the kill of teal and non-target species combined. Additional specifics regarding the evaluations will be contained in the MOAs. Further, if any of the participating States wish to allow pre-sunrise shooting hours during the special September teal season experiment, this evaluation must examine attempt rates on non-target species during both the period 30 minutes prior to sunrise and the post-sunrise period. Nebraska should conduct their experiment independent from the four States in the Mississippi Flyway.

If Iowa decides to participate in this experiment, Iowa must suspend their 5-day September duck season for the

duration of their participation. Iowa has requested, and we concur, that upon conclusion of the experiment they be given the opportunity to revert back to a 5-day September duck season if they so desire, regardless of the results of the experiment. However, if Iowa decides to retain their 5-day September duck season, or revert to it after the experiment, they will not be allowed to implement a September teal season in subsequent years. States should submit annual progress reports for this evaluation and a final report must be submitted and accepted by the Service before we consider making such seasons operational.

Regarding the regulations for this year, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 8.5 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2014.

ii. September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the daily bag limit for teal in Florida during the September teal/wood duck season be a total of 6 birds with no more than 2 wood ducks (the current total bag is 4 birds with no more than 2 wood ducks). The Council further recommended that Florida be permitted to add additional teal-only days to their September teal/wood duck season. In years when the teal harvest strategy calls for a 9-day teal season, Florida would maintain their current 5-day teal/wood duck season. In years when the teal harvest strategy calls for a 16-day teal season, Florida would add 4 additional teal-only days to their current 5-day teal/wood duck season.

The Mississippi Flyway Council recommended that the teal bag limit during Kentucky and Tennessee's September teal/wood duck seasons be the same as that permitted in other States with September teal-only seasons. The Council further recommended that States with September teal/wood duck seasons (Kentucky and Tennessee) be permitted to add additional teal-only days to their September teal/wood duck seasons. In years when the teal harvest strategy calls for a 9-day teal season, those States would maintain their current 5-day wood duck/teal season. In years when the teal harvest strategy calls for a 16-day teal season, those States would add 4 additional teal-only days to their current 5-day teal/wood duck season.

Service Response: Given the results from the previously referenced final report of the Teal Harvest Potential Working Group indicating that additional opportunity could be provided for blue-winged teal and green-winged teal (see discussion in D. Special Seasons/Species Management, i. September Teal Seasons), we concur with the Atlantic and Mississippi Flyway Councils' recommendations to allow 4 additional teal-only days during their September teal/wood duck season in Florida, Kentucky, and Tennessee when the teal harvest strategy provides for a 16-day Special September teal season. The 4 additional days must be consecutive and be held contiguously (i.e., no split) with the wood duck/teal portion of this special season. Furthermore, this change must be accompanied by an extensive public outreach effort to alert hunters to the differential regulations for the two time periods during the special season, especially with regard to wood ducks. Finally, this change is contingent on completion of a 3-year evaluation of hunter performance (via spy blind studies) with regard to attempt rates on non-target species during the ''teal-only'' portion of this special season.

Before the ''teal only'' portion of this season is approved operationally, the States must demonstrate negligible impacts to non-target species, defined as a non-target attempt rate no greater than 0.25 and non-target kill rate no greater than 0.10. The ''teal only'' portion of this season will not be approved for operational status if the experiment determines that (1) the upper 90 percent confidence limit on the attempt rate at non-target species exceeds 0.25, or (2) the kill of non-target species exceeds 10 percent of the kill of teal and non-target species combined. Additional specifics regarding the evaluations will be contained in the MOAs. If any of the 3 States wishes to retain pre-sunrise shooting hours during the ''teal only'' portion of the season, this evaluation must examine attempt rates on non-target species during both the period 30 minutes prior to sunrise and the post-sunrise period. This special season will not be expanded to other States.

xi. Other

Council Recommendations: The Central Flyway Council recommended that two additional blue-winged teal be allowed in the daily duck bag for the first 16 days of the regular duck season in the production States of North and South Dakota, Montana, and Wyoming. Impacts of this change would be evaluated over the first 3 years, beginning with the 2014–15 hunting season.

Service Response: In the April 30 **Federal Register**, we stated that ''any proposal to increase teal harvest, in order to be consistent with the intent of special regulations, should direct harvest primarily at blue-winged teal, and further that if Flyway Councils wished to pursue past regulatory approaches such as bonus teal, . . . to provide additional teal harvest opportunity, we requested that they provide compelling information as to why such policies and approaches should be reinstated (i.e., bonus teal) . . .'' While we further stated that we would prefer a consistent approach toward providing additional teal opportunities in northern States, we recognize the Central Flyway's preference for using bonus blue-winged teal bag limits to provide additional teal opportunities and the Central Flyway's rationale for doing so. Thus, we support the Central Flyway Council's recommendation to include bonus blue-winged teal in the regular season daily duck bag limit. The recent assessment of teal harvest opportunity indicated additional harvest potential for this species can be supported in most years (see discussion in D. Special Seasons/Species Management, i. September Teal Seasons), and we believe the proposal for bonus blue-winged teal will provide hunters increased opportunities with a very low likelihood of negative impacts to the blue-winged teal population. Further, we believe impacts to species other than blue-winged teal also are likely to be low. We will work with the Flyways to develop appropriate evaluation techniques to monitor any potential effects.

Thus, beginning in the 2014–15 regular duck seasons, we propose that two bonus blue-winged teal be included for the first 16 days of the regular duck season of the Central, Mississippi, and Atlantic Flyways when the blue-winged teal population estimate from the traditional survey area (i.e., strata 1–18, 20–50, and 75–77) is >4.7 million birds, and for the first 9 days when the blue-winged teal estimate is between 3.3 and 4.7 million. Bonus blue-winged teal will not be allowed when the blue-winged teal estimate is less than 3.3 million. In the Central Flyway, this regulation would be available only to the States of Montana, North Dakota, South Dakota, and Wyoming. In the Mississippi Flyway, if Iowa, Michigan, Minnesota, or Wisconsin desire to include bonus blue-winged teal in their regulations instead of an experimental special September teal season, they should submit a recommendation to the Service during the upcoming late-season

regulation process. Northern States in the Atlantic Flyway (i.e., Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, and West Virginia) may also select bonus blue-winged teal under the same regulations, but must submit a recommendation to do so at the upcoming late-season regulation process.

During the next 3 years, no expansion of teal opportunities in either production or non-production States in any Flyway will be allowed. These stipulations are to ensure that an evaluation of bonus blue-winged teal can proceed immediately and a comprehensive teal harvest strategy can be developed. The evaluation plan must be reviewed and supported by the Service's Division of Migratory Bird Management, and the strategy vetted by the Harvest Management Working Group and approved by the Service.

Bonus birds of other species will only be considered after a rigorous assessment of the harvest potential of the species, appropriate evaluations of the effects of the addition of the species to the bonus bag limit, and integration of the regulations into the applicable duck harvest management strategy(ies) in place at the time. Flyway(s) proposing such changes would be responsible for providing the resources for all necessary work.

Finally, because the proposal to allow two bonus blue-winged teal during the first 16 days of the regular duck season is technically a late season issue, and we have yet to propose specific frameworks for late seasons, we will reiterate this proposal in the forthcoming late season proposed rule (tentatively scheduled for mid to late August). Proposed frameworks for each Flyway will provide detailed specifics on the bonus blue-winged teal proposal.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Pacific Flyway Council recommended increasing the daily bag limit from 5 to 15 Canada geese in Pacific County, Washington. The Council also pointed out the need to eliminate several previously approved framework restrictions in Wyoming and Idaho.

Service Response: We agree with the Pacific Flyway Council's request to increase the Canada goose daily bag limit in Pacific County, Washington, and eliminate several previously approved framework restrictions in Wyoming and Idaho. The special early Canada goose hunting season is generally designed to reduce or control overabundant resident Canada goose populations. Increasing the daily bag limit from 5 to 15 geese in Pacific County, Washington, may help reduce or control existing populations of resident Canada geese, particularly those non-migratory (resident) dark-breasted Canada geese. Resident dark-breasted Canada geese are a result of the release in the mid-1970s of a transplanted flock of dusky Canada geese held in captivity since 1958. These transplanted geese hybridized with native, non-migratory western Canada geese and are similar in appearance to migratory dusky Canada geese for which there are especially restrictive regulations to minimize incidental harvest. Harvest of dark-breasted resident Canada geese during the regular hunting season can result in violation and premature closure of the regular Canada goose hunting season if these geese are misidentified as migratory dusky Canada geese.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in the Lower Peninsula of Michigan and Wisconsin be September 16, 2014, and in the Upper Peninsula of Michigan be September 11, 2014.

Service Response: We concur with recommended framework opening dates. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually. The framework closing date for the early goose season in the Upper Peninsula of Michigan is September 10. By changing the framework opening date for the regular season to September 11 in the Upper Peninsula of Michigan there will be no need to close goose hunting in that area for 5 days and thus lose the ability to maintain harvest pressure on resident Canada geese. We note that the most recent resident Canada goose estimate for the Mississippi Flyway was a record high 1,767,900 geese during the spring of 2012, 8 percent higher than the 2011 estimate of 1,629,800 geese, and well above the Flyway's population goal of 1.18 to 1.40 million birds.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Rhode Island be approved for minor expansion of the late season hunting zone boundary for Canada geese.

Service Response: We concur with the Council's recommended minor late season hunting zone expansion in Rhode Island. Resident Canada geese are overabundant in the Atlantic Flyway, and their numbers continue to increase in Rhode Island despite special early and late seasons designed to control them. No harvest of migrant Canada geese has been documented during Rhode Island's special late season for resident Canada geese, and we expect that this expansion will increase harvest pressure on resident geese without impacting migrant Canada geese.

9. Sandhill Cranes

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that Kentucky be allowed a 1-year continuation of their sandhill crane season for the 2014–15 season under harvest guidelines approved for their experimental season.

The Central and Pacific Flyway Councils recommended the expansion of an existing Rocky Mountain Population (RMP) sandhill crane hunting unit in southwestern Montana (the Dillon/Twin Bridges/Cardwell hunt area to include all of Madison and Gallatin Counties). The Councils also recommended using the 2014 RMP sandhill crane harvest allocation of 676 birds as proposed in the allocation formula using the 3-year running population average for 2011–13.

Service Response: We agree with the recommendation to allow Kentucky a 1-year continuation of their sandhill crane season. Although data from the third year of the experimental season is not yet available for review and incorporation into their assessment and final report, data from the first and second years indicate that harvest has been within the anticipated harvest analyzed in the 2011 environmental assessment. We look forward to receiving the final report this winter and will make a decision on the season's continuation next summer.

We also agree with the Central and Pacific Flyway Councils' recommendations on the RMP sandhill crane hunt area expansion in southwestern Montana and harvest allocation of 676 birds for the 2014–15 season, as outlined in the RMP sandhill crane management plan's hunt area

requirements and harvest allocation formula. The objective for RMP sandhill cranes is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. Additionally, the RMP management plan allows for the regulated harvest of cranes when the 3-year average of the population indices exceeds 15,000 cranes. In 2013, 20,360 cranes were counted in the September survey, an increase from the previous year's count of 15,417 cranes. The most recent 3-year average for the RMP sandhill crane fall index was 17,757, a slight decrease from the previous 3-year average of 17,992.

14. Woodcock

In 2011, we implemented an interim harvest strategy for woodcock for a period of 5 years (2011–15) (76 FR 19876, April 8, 2011). The interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. Utilizing the criteria developed for the interim strategy, the 3-year average for the Singing Ground Survey indices and associated confidence intervals fall within the ''moderate package'' for both the Eastern and Central Management Regions. As such, a ''moderate season'' for both management regions for the 2014–15 woodcock hunting season is appropriate. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

15. Band-Tailed Pigeons

Last year, the Pacific Flyway Council recommended reducing the daily bag limit for the Interior population of band-tailed pigeons from 5 birds to 2 (season length was unchanged at about 30 days), and the Central Flyway Council recommended no change. The Pacific Flyway Council also expressed concern about the status of the population and what an appropriate framework may be, and expressed concern about the inequity between frameworks between the Pacific Coast and Interior populations given similar population trajectories. While we did not change the Federal frameworks, we did reiterate our longstanding practice of giving considerable deference to harvest strategies developed in cooperative Flyway management plans. We further stated that a harvest strategy does not exist for the Interior population of band-tailed pigeons even though the development of one was identified as a high priority when the management plan was adopted in 2001. Thus, we recommended that the two Flyway Councils discuss this issue and advise us of the results of these deliberations at our June 2014 regulatory meeting. It is our desire to see adoption of a mutually acceptable harvest strategy for this population as soon as possible. We also note that both Arizona and Utah opted for more restrictive regulations last year than the Federal frameworks allow. While we recognize the pro-active nature of these voluntary State restrictions in part of the species' range, the actions do not fully address population-wide concerns expressed by the Pacific Flyway Council.

Despite our request, the Pacific and Central Flyway Councils did not reach consensus on what an appropriate framework may be (although both the Pacific and Central Flyways recommended no change in the Federal framework this year, leaving the option for restriction up to individual States), and indicated that development of a harvest strategy was not forthcoming. We have taken a close look at the limited data, and believe further investigation is warranted to ensure harvest is commensurate with population status. We recognize the need and difficulty in obtaining additional data for this population, but believe that there are analytical techniques that may allow use of available information to quantify the harvest potential of this population and better inform what an appropriate framework may be. We recommend that the Council's work together and with the Service's Division of Migratory Bird Management to review available information and conduct an assessment of the harvest potential of this population. We request they advise us of the results of this assessment and develop a regulatory recommendation using this information at our June 2015 regulatory meeting.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''standard'' season framework comprised of a 90-day season and 15-bird daily bag limit for States within the Eastern Management Unit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the ''standard'' season package of a 15-bird daily bag limit and a 70-day season for the 2014–15 mourning dove season in the States within the Central Management Unit.

The Pacific Flyway Council recommended use of the ''standard'' season framework for States in the Western Management Unit (WMU) population of doves. In Idaho, Nevada, Oregon, Utah, and Washington, the season length would be no more than 60 consecutive days with a daily bag limit of 15 mourning and white-winged doves in the aggregate. In Arizona and California, the season length would be no more than 60 consecutive days, which could be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit would be 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves. During the remainder of the season, the daily bag limit would be 15 mourning doves. In California, the daily bag limit would be 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves.

The Atlantic, Mississippi, Central, and Pacific Flyway Councils also recommended that the Service use a 3-year running average to calculate the predicted dove abundance in the annual assessment of the status of mourning doves in support of the regulation-setting process under the dove harvest strategy beginning with the 2015–16 hunting season.

Service Response: Last year, we approved implementation of the national mourning dove harvest strategy, as developed by the Mourning Dove Task Force, for the 2014–15 hunting season (78 FR 52658, August 23, 2013). This strategy replaced the interim harvest strategies that had been in place since 2009. A copy of the new strategy is available at available on our Web site at *http://www.fws.gov/migratorybirds/NewReports Publications/Dove/MODO%20Harvest %20Strategy%202014.pdf,* or at *http://www.regulations.gov.*

We also support modification of this national harvest strategy such that a 3-year running average is used to calculate each year's abundance estimate and calculate predicted dove abundance in the annual assessment of the status of mourning doves beginning with the 2015–16 hunting season as recommended by all four flyway Councils and vetted through the Mourning Dove Task Force. This Task Force continues to be a useful venue for developing issues for consideration and potential modification to the National Strategy.

This year, based on the harvest strategies and current population status, we agree with the recommended selection of the ''standard'' season frameworks for doves in the Eastern, Central, and Western Management Units.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended several changes in the Alaska early season frameworks. Specifically, they recommended:

1. Splitting the ''Dark Geese'' framework into separate frameworks for Canada geese and white-fronted geese.
2. For both Canada geese and white-fronted geese, the basic framework for season dates, outside dates, zones, and daily bag and possession limits remains the same as it was under ''Dark Geese.''
3. In Unit 18, in western Alaska, white-fronted geese daily bag and possession limits would be increased from a dark goose daily bag limit of 6 birds, 18 in possession, to a white-fronted goose daily bag limit of 8 birds, 24 in possession.
4. In Units 6B, 6C, and Hawkins and Hinchinbrook Islands in 6D, if dusky Canada geese exceed the population threshold to return to Action Level 1 status (3-year average based on May 2011, 2012, and 2014 surveys), then implement Action Level 1 regulations as stated in the Pacific Flyway Council's management plan for dusky geese, and eliminate requirements for a special permit hunt and harvest quota, but maintain possession limits at 2 times the daily bag limit.

Service Response: We agree with the Pacific Flyway Council's recommended changes in the Alaska early season frameworks, including elimination of requirements for a special permit hunt and harvest quota in Units 6B, 6C, and Hawkins and Hinchinbrook Islands in 6D. The 3-year (2011–13) moving average fall population of Pacific white-fronted geese was 628,198 geese, and is well above the population objective of 300,000 geese as identified in the Pacific Flyway Council's management plan for this population. The Yukon-Kuskowim Delta (Unit 18) supports over 95 percent of the breeding population of Pacific white-fronted geese.

With regard to the Action Level regulations as described in the Council's management plan for dusky Canada geese, the dusky Canada goose population estimate for 2014 was 15,049 geese and represents an increase from the 2012 estimate of 13,660 geese (there was no estimate available in 2013). The recent 3-year (2011–14) average population estimate was 13,503 geese, which is above the threshold of 12,500 geese necessary to remove Action Level 2 harvest restrictions and return to Action Level 1 harvest regulations, which do not require a special permit hunt and harvest quota for dusky Canada geese.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 30, 2014, proposed rule (79 FR 24512):

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Planning and Review;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12988, 13175, 13132, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2014–15 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: July 21, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2014–15 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2014, and March 10, 2015. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the

States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all Counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, and Pennsylvania, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin. The seasons in Iowa, Michigan, Minnesota, and Wisconsin are experimental.

Central Flyway—Colorado (part), Kansas, Nebraska, New Mexico (part), Oklahoma, and Texas. The season in the northern portion of Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 6 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, except in South Carolina, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 6 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks. In addition, a 4-consecutive-day experimental season may be selected in September either immediately before or immediately after the 5-consecutive day teal/wood duck season. The daily bag limit is 6 teal.

Iowa: In lieu of an experimental special September teal season, Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 20). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, and gallinules and will be the same as those allowed in the regular season. Flyway species and area restrictions will remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or

younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoters, Eiders, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

A Canada goose season of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese, except in designated areas of Minnesota where the daily bag limit may not exceed 10 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl and crane seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, and Oklahoma, where the daily bag limit may not exceed 8 Canada geese and in North Dakota and South Dakota, where the daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl and crane seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during September 1–15. The daily bag limit is 4.

Oregon may select a 15-day season during September 1–15. In addition, Oregon may select a 15-day season in the Northwest Zone during September 1–20. The daily bag limit is 5.

Idaho may select a 7-day season during September 1–15. The daily bag limit is 2.

Washington may select a 15-day season during September 1–15. The daily bag limit is 5, except in Pacific County where the daily bag limit is 15.

Wyoming may select an 8-day season during September 1–15. The daily bag limit is 3

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Mississippi Flyway

Regular goose seasons may open as early as September 11 in the Upper Peninsula of Michigan and September 16 in Wisconsin and the Lower Peninsula of Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone).

Daily Bag Limit: 2 sandhill cranes.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Experimental Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and January 31.

Hunting Seasons: A season not to exceed 30 consecutive days may be selected in Kentucky and a season not

to exceed 60 consecutive days may be selected in Tennessee.

Daily Bag Limit: Not to exceed 2 daily and 2 per season in Kentucky. Not to exceed 3 daily and 3 per season in Tennessee.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Mississippi Flyway Council.

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 consecutive days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway

Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between January 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag limits: Not to exceed 1 daily and 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 25) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 25) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 rails, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 20) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 45 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 36 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 90 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

For all States except Texas:

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas:

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zoning and Split Seasons: Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited take of mourning and white-tipped doves may also occur during that special season (see Special White-winged Dove Area).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 19), but not earlier than September 17, and January 25.

C. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Special White-winged Dove Area in Texas:

In addition, Texas may select a hunting season of not more than 4 days for the Special White-winged Dove Area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be mourning doves and no more than 2 may be white-tipped doves.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 60 consecutive days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves. During the remainder of the season, the daily bag limit is 15 mourning doves. In California, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 ducks. Daily bag limits in the North Zone are 10, and in the Gulf Coast Zone, they are 8. The basic limits may include no more than 1 canvasback daily and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—The daily bag limit is 4.

Canada Geese—The daily bag limit is 4 with the following exceptions:

A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D, the possession limit is two times the daily bag limit.

D. In Units 9, 10, 17, and 18, the daily bag limit is 6 Canada geese.

White-fronted Geese—The daily bag limit is 4 with the following exceptions:

A. In Units 9, 10, and 17, the daily bag limit is 6 white-fronted geese.

B. In Unit 18, the daily bag limit is 8 white-fronted geese.

Brant—The daily bag limit is 2.

Snipe—The daily bag limit is 8.

Sandhill cranes—The daily bag limit is 2 in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the North Zone. In the remainder of the North Zone (outside Unit 17), the daily bag limit is 3.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1–October 31.

C. In Unit 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit may be issued per hunter per season.

D. In Unit 18, no more than 500 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In Unit 22, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

F. In Unit 23, no more than 300 permits may be issued during the

operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag Limits: Falconry daily bag limits for all permitted migratory game birds must not exceed 3 birds, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular season bag limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to

Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; then northeast along U.S. Highway 277 Spur to Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence along Loop 1604 south and east to Interstate Highway 37; thence south along Interstate Highway 37 to U.S. Highway 181 in Corpus Christi; thence north and east along U.S. 181 to the Corpus Christi Ship Channel, thence eastwards along the south shore of the Corpus Christi Ship Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Eastern Long Island Goose Area (North Atlantic Population (NAP) High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (Resident Population (RP) Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam

Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone—That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North September Canada Goose Zone—That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central September Canada Goose Zone—That portion of the State south of the North September Canada Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South September Canada Goose Zone—That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central September Canada Goose Zone—The remainder of the State between the south border of the Central Zone and the North border of the South Zone

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Intensive Harvest Zone—That portion of the State encompassed by a line extending east from the junction of US 2 and the North Dakota border, US 2 east to MN 32 N, MN 32 N to MN 92 S, MN 92 S to MN 200 E, MN 200 E to US 71 S, US 71 S to US 10 E, US 10 E to MN 101 S, MN 101 S to Interstate 94 E, Interstate 94 E to US 494 S, US 494 S to US 212 W, US 212 W to MN 23 S, MN 23 S to US 14 W, US 14 W to the South Dakota border, South Dakota Border north to the North Dakota border, North Dakota border north to US 2 E.

Rest of State: Remainder of Minnesota.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I–94; then east on I–94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State—Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—The Counties of Campbell, Marshall, Roberts, Day, Clark, Codington, Grant, Hamlin, Deuel, Walworth; that portion of Perkins County west of State Highway 75 and south of State Highway 20; that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction; that portion of Potter County east of U.S. Highway 83; that portion of Sully County east of U.S. Highway 83; portions of Hyde, Buffalo, Brule, and Charles Mix counties north and east of a line beginning at the Hughes-Hyde County line on State Highway 34, east to Lees Boulevard, southeast to the State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, and north on U.S. Highway 281 to the Charles Mix-Douglas County boundary; that portion of Bon Homme County north of State Highway 50; McPherson, Edmunds, Kingsbury, Brookings, Lake, Moody, Miner, Faulk, Hand, Jerauld, Douglas, Hutchinson, Turner, Lincoln, Union, Clay, Yankton, Aurora, Beadle, Davison, Hanson, Sanborn, Spink, Brown, Harding, Butte, Lawrence, Meade, Shannon, Jackson, Mellette, Todd, Jones, Haakon, Corson, Ziebach, McCook, and Minnehaha Counties.

Texas

Eastern Goose Zone—East of a line from the International Toll Bridge at Laredo, north following IH–35 and 35W to Fort Worth, northwest along U.S. Hwy. 81 and 287 to Bowie, north along U.S. Hwy. 81 to the Texas-Oklahoma State line.

Pacific Flyway

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area— Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone—The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone —That portion of the State west of U.S. 283.

Early Zone —That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then north on U.S.–283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K–128.

Late Zone—That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction

with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then south on U.S.–283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with U.S.–77, then north on U.S.–77 to its junction with Butler County, NE. 150th Street, then east on Butler County, NE. 150th Street to its junction with U.S.–35, then northeast on U.S.–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone—That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with U.S.–35, then southwest on U.S.–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Nebraska

Special Teal Season Area (south)—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

Special Teal Season Area (north)—The remainder of the State.

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Rd; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone—All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to I–39, southerly along I–39 to I–90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92

to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Tennessee

Hunt Zone—That portion of the State south of Interstate 40 and east of State Highway 56.

Closed Zone—Remainder of the State.

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line, then south along the Texas-Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—All of Big Horn, Hot Springs, Park and Washakie Counties.

Pacific Flyway

Arizona

Special Season Area—Game Management Units 28, 30A, 30B, 31, and 32.

Idaho

Special Season Area—See State regulations.

Montana

Special Season Area—See State regulations.

Utah

Special Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15

to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2014-15 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 2014–17569 Filed 7–30–14; 8:45 am]

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FEDERAL REGISTER

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Part VI

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA–HQ–OEM–2014–0328; FRL–9911–62–OSWER]

RIN 2050–ZA07

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for information.

SUMMARY: The Environmental Protection Agency (EPA), in response to Executive Order 13650, requests comment on potential revisions to its Risk Management Program regulations and related programs. In this Request for Information (RFI), the Agency asks for information and data on specific regulatory elements and process safety management approaches, the public and environmental health and safety risks they address, and the costs and burdens they may entail. The EPA will use the information received in response to this RFI to inform what action, if any, it may take.

DATES: Comments and additional material must be received on or before October 29, 2014.

ADDRESSES: Submit comments and additional materials, identified by docket EPA–HQ–OEM–2014–0328 by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Send comments to: OSWER Docket, EPA Docket Center, Mail Code 2822–1T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OEM–2014–0328. Please include two copies of your comments.
- *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–OEM–2014–0328. 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–OEM–2014–0328. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

Docket: The EPA has established a docket for this information request under Docket ID Number EPA–HQ–OEM–2014–0328. All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in regulations.gov or in hard copy at the EPA Docket Center, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this RFI, contact Mr. James Belke, Chemical Engineer, United States Environmental Protection Agency, Office of Emergency Management, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–8023; email: *belke.jim@epa.gov.*

Electronic copies of this RFI and related news releases are available at EPA's Web page at *http://www.epa.gov/emergencies.* Copies of this RFI are also available at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Here are the contents of today's notice.

I. Background
A. Statutory Authority
B. Executive Order 13650
C. EPA Risk Management Program Regulations
II. Discussion and Request for Data, Information, and Comments
A. Introduction
B. Potential Costs and Economic Effects of Regulatory and Policy Changes
C. Items in OSHA's RFI Relevant to EPA's RMP Regulation
1. Update the List of Regulated Substances
a. Adding Other Toxic or Flammable Substances
b. Adding High and/or Low Explosives
c. Adding Ammonium Nitrate
d. Adding Reactive Substances and Reactivity Hazards
e. Adding Other Categories of Substances
f. Removing Certain Substances From the List or Raising Their Threshold Quantity
g. Lowering the Threshold Quantity for Substances Currently on the List
2. Additional Risk Management Program Elements
3. Define and Require Evaluation of Updates to Applicable Recognized and Generally Accepted Good Engineering Practices
4. Extend Mechanical Integrity Requirements To Cover Any Safety-Critical Equipment
5. Require Owners and Operators To Manage Organizational Changes
6. Require Third-Party Compliance Audits
7. Effects of OSHA PSM Coverage on RMP Applicability
D. Additional Items for Which EPA Requests Information
1. Safer Technology and Alternatives Analysis
2. Emergency Drills To Test a Source's Emergency Response Program or Plan
3. Automated Detection and Monitoring for Releases of Regulated Substances
4. Additional Stationary Source Location Requirements
5. Compliance With Emergency Response Program Requirements in Coordination With Local Responders
6. Incident Investigation and Accident History Requirements
7. Worst Case Release Scenario Quantity Requirements for Processes Involving Numerous Small Vessels Stored Together
8. Public Disclosure of Information To Promote Regulatory Compliance and Improve Community Understanding of Chemical Risks
9. Threshold Quantities and Off-Site Consequence Analysis Endpoints for Regulated Substances Based on Acute Exposure Guideline Level Toxicity Values
10. Program 3 NAICS Codes Based on RMP Accident History Data
11. The ''Safety Case'' Regulatory Model
12. Streamlining RMP Requirements

I. Background

A. Statutory Authority

The statutory authority for this action is provided by section 112(r) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r)) and by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), (42 U.S.C. 11001–11050), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99– 499), (SARA).

B. Executive Order 13650

On August 1, 2013, President Obama signed Executive Order 13650, entitled *Improving Chemical Facility Safety and Security.* The Executive Order establishes the Chemical Facility Safety and Security Working Group (''Working Group''), co-chaired by the Secretary of Homeland Security, the Administrator of EPA, and the Secretary of Labor or their designated representatives at the Assistant Secretary level or higher, and composed of senior representatives of other Federal departments, agencies, and offices. The Executive Order requires the Working Group to carry out a number of tasks whose overall aim is to prevent chemical accidents, such as the explosion that occurred at the West Fertilizer facility in West, Texas, on April 17, 2013.

Section 6 of the Executive Order is entitled ''Policy, Regulation, and Standards Modernization'', and among other things, requires certain federal agencies to consider possible changes to existing chemical safety and security regulations. Specifically, section 6(e)(ii) of the Executive Order requires the Secretary of Labor to issue a RFI designed to identify issues related to modernization of the Process Safety Management (PSM) standard and related standards necessary to meet the goal of preventing major chemical accidents. The Occupational Safety and Health Administration (OSHA) published a RFI responsive to this portion of the order on December 9, 2013 (78 FR 73756; *http://www.gpo.gov/fdsys/pkg/FR-2013-12-09/pdf/2013-29197.pdf*). The OSHA RFI requested information on 17 potential policy and rulemaking topics relating to modernization of the PSM standard and other related OSHA standards.

While Executive Order 13650 does not specifically direct EPA to publish a similar RFI, EPA believes it is an appropriate step for several reasons. First, section 6(a)(i) of the order requires the Working Group to develop options for improved chemical facility safety and security that identify ''improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations.'' With regard to EPA specifically, section 6(c) of the order requires the Administrator of EPA and the Secretary of Labor to ''review the chemical hazards covered by the Risk Management Program (RMP) and the Process Safety Management Standard (PSM) and determine if the RMP or PSM can and should be expanded to address additional regulated substances and types of hazards.'' Information collected through this action will inform the results of this review.

Second, the EPA RMP regulation closely tracks the accident prevention measures contained in the OSHA PSM standard because Section 112(r)(7)(D) of the CAA requires EPA to coordinate the RMP regulation with ''any requirements established for comparable purposes'' by OSHA. Consequently, the OSHA PSM standard and EPA RMP regulation are closely aligned in content, policy interpretations, Agency guidance, and enforcement. Since the inception of these regulations, EPA and OSHA have coordinated closely on their implementation in order to minimize regulatory burden and avoid conflicting requirements for regulated facilities. For example, owners and operators of RMP-covered processes also subject to the OSHA PSM standard will generally have met their RMP accident prevention program obligations if they have properly implemented their PSM program. This RFI will allow EPA to evaluate any potential updates to the RMP regulation in parallel to OSHA's evaluation of potential updates to the PSM standard. Lastly, this RFI addresses a number of added topics in which the Agency is interested that are not raised in the OSHA RFI.

Topics are divided into two categories—those addressed in parallel to the OSHA RFI, and additional topics not raised by OSHA. Readers are encouraged to review the OSHA RFI in detail, as this notice does not always reiterate OSHA's full justification on the same or similar topics.

Information collected under this RFI will inform EPA as it considers what actions, if any, may be necessary to update the RMP regulations. It does not commit the Agency to rulemaking. If the Agency elects to undertake rulemaking, it will do so in accordance with established rulemaking procedures as set forth in the Clean Air Act section 307(d), 42 U.S.C. 7607(d).

C. EPA Risk Management Program Regulations

Both EPA's 40 CFR part 68 RMP regulation [1] and OSHA's 29 CFR 1910.119 PSM standard were authorized in the Clean Air Act (CAA) Amendments of 1990 (1990 CAAA), in response to a number of catastrophic chemical accidents occurring worldwide that had resulted in public and worker fatalities and injuries, environmental damage, and other community impacts. OSHA published the PSM standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 CAAA, using its authority under 29 U.S.C. 653.

The 1990 CAAA added to the accidental release provisions under CAA section 112(r). The statute required EPA to develop a list of at least 100 regulated substances for accident prevention and related thresholds (CAA section 112(r)(3)–(5)), authorized accident prevention regulations (CAA section 112(r)(7)(A)), and required EPA to develop ''reasonable regulations'' requiring facilities with over a threshold quantity (TQ) of a regulated substance to undertake accident prevention steps and submit a ''risk management plan'' to various local, state, and federal planning entities (CAA section 112(r)(7)(B)).

EPA published the RMP regulation in two stages. The Agency published the list of regulated substances and TQs in 1994 (59 FR 4478, January 31, 1994) (the ''list rule'') [2] and published the RMP final regulation, containing risk management requirements for covered sources, in 1996 (61 FR 31668, June 20, 1996).[3] [4] Both the OSHA PSM standard and the EPA RMP regulation aim to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and

[1] 40 CFR part 68 is titled, ''Chemical Accident Prevention Provisions,'' but is more commonly known as the ''RMP regulation,'' the ''Risk Management Program,'' or ''the RMP.'' The RMP may also refer to the document required to be submitted under subpart F of 40 CFR part 68, the Risk Management Plan. This document generally uses RMP or Risk Management Program to refer to 40 CFR part 68. See *http://www.epa.gov/oem/content/rmp/* for more information on the Risk Management Program.

[2] Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A–91–74.

[3] Documents and information related to development of the RMP regulation can be found in EPA docket number A–91–73.

[4] The 40 CFR Part 68 RMP regulations apply to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

management practices. In addition to requiring implementation of management program elements, the RMP regulation requires covered sources to submit a document summarizing the source's risk management program—called a risk management plan—to EPA. The RMP regulation required covered sources to comply with its requirements and submit initial risk management plans to EPA by June 21, 1999.

The RMP establishes three ''program levels'' for regulated processes:

Program level 1 applies to processes that would not affect the public in the case of a worst-case release and with no accidents with specific off-site consequences within the past five years. Program 1 imposes limited hazard assessment requirements and minimal prevention and emergency response requirements.

Program level 2 applies to processes not eligible for Program 1 or subject to Program 3, and imposes streamlined prevention program requirements, including safety information, hazard review, operating procedures, training, maintenance, compliance audits, and incident investigation elements. Program 2 also imposes additional hazard assessment, management, and emergency response requirements.

Program level 3 applies to processes not eligible for Program 1 and either subject to OSHA's PSM standard under federal or state OSHA programs or classified in one of ten specified North American Industrial Classification System (NAICS) codes listed at 40 CFR 68.10(d)(1). Program 3 imposes elements nearly identical to those in OSHA's PSM standard as the accident prevention program. The Program 3 prevention program includes requirements relating to process safety information, process hazard analysis, operating procedures, training, mechanical integrity, management of change, pre-startup review, compliance audits, incident investigations, employee participation, hot work permits, and contractors. Program 3 also imposes the same hazard assessment, management, and emergency response requirements that are required for Program 2.

EPA believes the RMP regulation has been effective in preventing and mitigating chemical accidents in the United States and protecting human health and the environment from chemical hazards. However, major incidents, such as the West, Texas explosion, highlight the importance of reviewing and evaluating current practices and regulatory requirements, and applying lessons learned to advance process safety management where needed. This RFI seeks public input on process safety and risk management issues relevant to the RMP regulation to inform potential actions that may further reduce the number of chemical accidents within the United States.

II. Discussion and Request for Data, Information, and Comments

A. Introduction

This section discusses each RMP item and provides specific questions to collect data, information, and comments. The Agency invites the public to respond to any questions for which they have specific knowledge, data, or information, regardless of their involvement in RMP-covered operations. Note that at several points in this document, we discuss whether modifying, clarifying, strengthening, or making more explicit a requirement is an appropriate way to address an issue. The solicitation of comment on these matters should not be read as EPA, OSHA, the Department of Justice, or any other federal entity suggesting legal ambiguity in the relevant regulations or recognizing a particular interpretation by any regulated entity of either CAA section 112(r) or the RMP regulation. For purposes of this comment solicitation, exploration of ways to further clarify particular aspects of the current regulations should not be viewed as an indication that the current language is inadequate, or in any way undermines our ability to enforce these regulations as written.

B. Potential Costs and Economic Effects of Regulatory and Policy Changes

As part of this RFI, the Agency is requesting data and information on the potential costs and economic impacts of amending regulatory requirements relevant to the various issues identified, including any possible significant economic impact on a substantial number of small entities. EPA requests that commenters discuss potential economic impacts, whenever possible, in terms of quantitative benefits (e.g., reductions in injuries, fatalities, and property damage), costs (e.g., compliance costs, including paperwork burden, or decreases in production), and offsets to costs (e.g., less need for maintenance and repairs, less loss or waste of product) when responding to the questions in this RFI. EPA also requests that commenters provide data and information on economic effects that any amendments may have on market conditions or services (e.g., market structure and concentration), and in particular, any special circumstances related to small entities, such as potential market-structure disruptions or uniquely high costs that small entities may bear.

EPA requests that commenters discuss economic impacts in as specific terms as possible. For example, if a regulatory or policy change would necessitate additional employee training, then helpful information would include the following: The training courses necessary; the types of employees or contractors who would receive the training; topics covered; any retraining necessary; and the training costs if conducted by a third-party vendor or in-house trainer. The Agency invites comment on the time and level of expertise required to implement potential regulatory or policy changes discussed in this RFI, even if dollar-cost estimates are not available. For discussion of equipment-related costs, EPA requests that commenters estimate relevant factors, such as purchase price, cost of installation, cost of equipment maintenance, cost of training, and expected life of the equipment. The Agency also requests that, when responding to the questions in this RFI, commenters discuss any disproportionate impacts to communities near chemical facilities, particularly with respect to economically distressed, low-income, or predominantly minority communities. For example, disproportionate impacts could be changes that affect the number of local residents employed at a facility or the number of residents affected by a release from a facility. Commenters should also include specific information about any technical feasibility issues or implementation challenges associated with any of the possible revisions discussed in thie RFI. EPA also welcomes input on which potential amendments to regulatory requirements should be given priority for further development over any others along with the basis for such prioritization. For example, identify those issues posing a greater safety risk than others; those requiring less time or effort to amend; those with less costs to industry; or other reasons.

C. Items in OSHA's RFI Relevant to EPA's RMP Regulation

This section discusses items that are the same or related to items in the OSHA RFI that could also apply to or affect the RMP regulation. Each item discussion is followed by specific questions to collect data, information, and comments on each item.

1. Update the List of Regulated Substances

Section 112(r)(3) of the 1990 CAAA authorized EPA to develop a list of at least 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or to the environment. EPA was required to use, but was not limited to, the list of extremely hazardous substances (EHSs) published under the Emergency Planning and Community Right-to-Know Act (EPCRA), with modifications as appropriate. The initial list was also to include 16 substances specified by statute. EPA was to consider the following criteria: (1) The severity of any acute adverse health effects associated with accidental releases of the substances; (2) the likelihood of accidental releases of the substances; and (3) the potential magnitude of human exposure to accidental releases of the substances. The TQ for each substance was to account for the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance, and the amount that if accidentally released could cause death, injury or serious adverse effects on human health. The list may not include any air pollutant for which a national primary ambient air quality standard has been established (except anhydrous sulfur dioxide which is required by statute to be included on the list), nor any CAA title VI stratospheric ozone pollutants. The list may be revised by EPA or by petition and it must be reviewed at least every 5 years.

The August 1999 Chemical Safety Information, Site Security and Fuels Regulatory Relief Act amended section 112(r)(4) of the CAA to exempt from RMP reporting ''a flammable substance when used as a fuel or held for sale as a fuel at a retail facility . . . because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.'' However, flammable substances used as a feedstock or held for sale as fuel at a wholesale facility are still covered.

The list now consists of two categories of chemicals—77 toxic substances and 63 flammable substances. The regulated substances and TQs are found in 40 CFR 68.130. The list of toxic substances is based on a subset of the EHS acute toxics found in 40 CFR part 355. The RMP list of substances was further limited to gases and volatile liquids (vapor pressure equal to or greater than 10 mm of mercury (Hg) at 25 °C), focusing accident prevention regulations on those chemicals that were more likely to become airborne and have an adverse effect beyond a facility's fence line in the event of an accidental release.

Flammable gases and volatile flammable liquids with the National Fire Protection Association (NFPA) flammability ratings of 4 (i.e., gases and liquids having a flash point below 73 °F (22.8 °C) and a boiling point below 100 °F (37.8 °C)) were listed. Only chemicals in commercial production were included on the list and several non-EHS toxic chemicals were listed based on high production volumes and accident history. Most of the sixteen substances mandated by statute were also identified through the listing criteria for toxic or flammable substances.

The 1994 final list rule included as covered chemicals, any ''high explosives'' which were explosives classified by the Department of Transportation (DOT) as Class 1, Division 1.1 and listed as such in 49 CFR 172.101 (the Hazardous Materials Table). Subsequently, the explosives were deleted from coverage in 1998 (63 FR 640, January 6, 1998) [5] due to settlement of litigation with the Institute for Manufacturers of Explosives (IME) (discussed in more detail below).

EPA is requesting information on whether the Agency should modify the list of regulated substances by:

- Adding other toxic or flammable substances
- Adding high and/or low explosives
- Adding ammonium nitrate
- Adding reactive substances and reactivity hazards
- Adding other categories of substances
- Removing certain substances from the list or raising their TQ
- Lowering the TQ for substances currently on the list

Each of these areas is briefly discussed below.

a. Adding Other Toxic or Flammable Substances

EPA is interested in determining whether there are other substances that meet the established acute toxicity or flammability criteria for listing, are in commerce, and are present in sufficient quantities that would present a risk to the community if accidentally released.

EPA requests information on the following questions:

i. What other chemical lists or other sources of information should be reviewed to identify acutely toxic or flammable chemicals meeting the RMP listing criteria?

ii. What chemicals, if any, should EPA add to the RMP list of regulated toxic and flammable substances? Please provide references to the acute toxicity studies, sources of flammability information or summary results of such studies, information showing that the chemical meets the listing criteria or examples of incidents related to the hazards associated with the chemicals.

iii. Please provide any information on the annual amount of the individual substance manufactured, imported or used, the extent of its availability in commerce and the types of U.S. industries that manufacture, import, or use the substance.

iv. What would be the economic impacts of adding other toxic or flammable chemicals to the RMP list of substances? Are there any special circumstances involving small entities that EPA should consider with respect to adding such chemicals to the RMP list of substances?

b. Adding High and/or Low Explosives

In light of the April 17, 2013 explosion in West, Texas involving ammonium nitrate (AN) fertilizer, EPA is reconsidering whether it should include explosives on the RMP list. In addition to raising concerns about AN, this accident has shifted attention to how well facilities handling other potentially explosive materials are safeguarding communities from their hazards and whether emergency responders are prepared to deal with accidents involving such materials, whether or not they are designed to be used as explosives. This subsection of the RFI addresses explosives other than AN—Further discussion of regulating AN, including AN fertilizer, is covered later in this section.

EPA listed high explosives on the RMP list in 1994 but removed them on January 6, 1998 (63 FR 640) (see discussion below regarding settlement of litigation with IME).

The 1994 final RMP list rule (59 FR 4478, January 31, 1994) included Division 1.1 explosives—a category of high explosives defined by DOT classification. DOT Division 1.1 explosives are those that present a mass explosion hazard, which is an explosion that affects almost the entire load instantaneously. Explosives were

[5] Documents and information related to deleting explosives from the list of RMP-regulated substances can be found in EPA docket number A–96–08.

initially listed because of their potential to cause off-site effects from blast waves. In addition, EPA believed that potential gaps existed in emergency planning and response communication that made risk management planning appropriate for sources with explosives.

EPA chose to list only DOT Division 1.1 explosives because EPA's analysis indicated that low explosives, which primarily pose a fire hazard rather than a mass explosion hazard, were less likely to cause a catastrophic event when compared to the same quantity of high explosives. The deflagration or burning of a low explosive generates lower pressures and is less destructive than the detonation of a high explosive, although the Agency recognized that it may be possible for some low explosives to detonate under unusual conditions, with effects similar to the detonation of a high explosive. The DOT Division 1.1 explosives were listed because of their potential to readily detonate, causing off-site impacts. High explosives were listed as a class, rather than as individual substances, because explosives are usually mixtures or formulations rather than specific chemicals. An individual chemical could be a component of a high explosive or a low explosive, or could be non-explosive, depending on various factors, such as particle size, concentration, and other components of the formulation.

The Institute of Makers of Explosives (IME) petitioned for judicial review challenging the final listing of high explosives (*IME* v. *EPA,* D.C. Cir. No. 94–1276). Among IME's objections to the rule were that existing regulations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), DOT, Mine Safety and Health Administration (MSHA), and OSHA already adequately regulated DOT Division 1.1 explosives. In a settlement with IME, the Agency agreed to propose delisting explosives and IME agreed to undertake certain measures to enhance local emergency response and dismiss its case if EPA ultimately delisted high explosives (61 FR 13858, March 28, 1996). The measures that IME agreed to take included the following:

- IME member companies would post at their facilities warning signs at all normal access routes stating, ''Danger. Never Fight Explosive Fires. Explosives are stored on this site,'' and providing an emergency phone number.
- Whenever a new Division 1.1 commercial explosives storage or manufacturing location is established at a temporary job site, IME member companies will notify Local Emergency Planning Committees (LEPCs) and other local authorities (e.g., fire departments and law enforcement agencies) of the type, quantity, and location of explosives on site.
- At Division 1.1 commercial explosives storage or manufacturing locations with 5,000 pounds or more of Division 1.1 explosives (not including temporary job sites) where preparation of emergency response plans is not already required, IME member companies would prepare emergency response plans, notify LEPCs and other local authorities of the type, quantity, and location of explosives on site, provide the emergency response plans to local emergency responders, and respond to reasonable requests for information from said authorities.
- IME member companies also would inform their customers and IME would inform other non-IME commercial explosives manufacturers of the contents of the Settlement Agreement and the actions to be taken.

EPA proposed to delist high explosives from the RMP list on April 15, 1996 (61 FR 16598) and removed high explosives in a January 6, 1998 final rule (63 FR 640). The preambles to both rules discuss the measures IME was to take to enhance local emergency response.

Even after the removal of high explosives from the RMP list, most forms of explosives (not just high explosives) remain subject to hazardous chemical inventory reporting requirements under EPCRA. The owner or operator of any facility with more than a reporting threshold of any hazardous chemical requiring a safety data sheet (formerly material safety data sheet) under the OSHA Hazard Communication Standard is required to submit safety data sheets to their State Emergency Response Commission (SERC), LEPC, and local fire department, and to annually report their inventory of hazardous chemicals to their SERC, LEPC, and local fire department.[6] This information should better prepare local authorities to respond to emergencies at facilities that handle hazardous chemicals, including explosives.

ATF regulates ''explosive materials'' which are defined as explosives, blasting agents, water gels and detonators. Explosive materials include, but are not limited to, all items in the ''List of Explosive Materials,'' which is published annually.[7]

ATF regulations[8] provide specific construction requirements for storage of explosive materials in magazines and limit the amount of these materials that can be stored in each magazine. Such magazines must be regularly inspected and meet the Table of Distance requirements which specify distances that the materials must be stored away from inhabited buildings, public highways, and passenger railways, to ensure an accidental explosion will not produce blast waves that are hazardous to people at distances where the public could be affected. ATF inspects licensed facilities to ensure the safe and secure storage of explosives, their proper inventory and control, and accurate recordkeeping. However, ATF does not inspect or regulate manufacturing processes.[9]

OSHA regulates the manufacture, keeping, having, storage, sale, transportation, and use of explosives and blasting agents under its Occupational Safety and Health Standards for explosives and blasting agents (29 CFR 1910.109). Section 1910.109(k)(2) of this standard also requires that explosive manufacturers meet the requirements of the PSM standard (29 CFR 1910.119). OSHA regulations provide construction requirements for explosive materials storage magazines and specify minimum distances between magazines with explosives and blasting agents, between stores of AN and blasting agents, and between blasting agents and inhabited buildings, passenger railroads, and public highways. Regulations involving the storage of all grades of AN, including fertilizer grade, but not blasting agents, are found at 29 CFR 1910.109(i).

Significant accidents involving explosives have raised questions concerning whether existing safety regulations are adequate. An April 8, 2011 explosion at Donaldson Enterprises in Waikele, Hawaii, killed five workers who were disposing of fireworks. The U.S. Chemical Safety and Hazard Investigation Board (CSB) investigated the explosion and determined that gaps in federal regulations—specifically with regard to dismantling and disposal of explosives—contributed to the accident.[10] The January 7, 1998, explosion at the Sierra Chemical Company's Kean Canyon explosives manufacturing plant prompted the state of Nevada to develop regulations

[6] See 40 CFR part 370.

[7] The 2013 List of Explosive Materials can be found at *http://www.gpo.gov/fdsys/pkg/FR-2013-10-28/pdf/2013-25370.pdf.*

[8] 27 CFR part 555, Subpart K.

[9] Sierra Chemical Co. Final Investigation Report, CSB, 9–23–1988.

[10] CSB Report No. 2011–06–I–HI.

covering certain explosives manufacturing facilities under the state's Chemical Accident Prevention Program,[11] which is similar to EPA's RMP regulation.

EPA is seeking information relating to the potential regulation of explosives under the RMP. EPA requests information on the following questions:

i. Should EPA reconsider listing explosives on the RMP list? What are the safety gaps in current regulations and practice (e.g., EPCRA, other federal programs, state programs, and industry efforts) that can best be filled by expansion of the RMP? Are there other approaches for filling any such safety gaps? What type of explosive materials should be covered and why? How many facilities manufacture, store or use explosives and what are the typical quantities stored on-site by type of facility or industry? What TQs should be established, and what should be the basis for the TQs? If EPA were to list explosives and establish a TQ at 5,000 pounds (the same TQ that was established for explosives in the 1994 list rule), how many facilities would exceed that TQ and potentially be regulated?

ii. Are there other incidents involving the manufacture and processing of explosive materials that should be reviewed to determine if covering these operations under the RMP would decrease the risk of an accidental explosion affecting an off-site community? Does the presence of explosives impose unique risks on rural, disadvantaged, or otherwise environmentally burdened communities?

iii. Should the RMP regulation apply to manufacturers of explosives, end users, and/or explosive recyclers?

iv. If the RMP regulation is amended to cover explosives, should EPA consider establishing requirements for safe separation distances between explosive materials and public receptors similar to those required by ATF and OSHA (see section II.D.4 of this RFI for additional discussion of stationary source location requirements)? What other requirements should EPA consider? Which if any of these requirements could have prevented or minimized the impacts of specific historical accidents?

v. What would be the economic impacts of adding explosives to the RMP list of substances? Are there any special circumstances involving small entities that EPA should consider with respect to adding explosives to the RMP list of substances?

vi. As an alternative to expanding the scope of the RMP, would expanded use of EPCRA information (such as better integration of information on explosive hazards into local emergency plans) and other governmental and industry programs (including voluntary programs) be able to address safety gaps? What are the advantages and disadvantages of such an approach relative to expansion of the RMP?

c. Adding Ammonium Nitrate

As previously discussed, EPA listed high explosives on the RMP list in 1994 but removed them on January 6, 1998 (63 FR 640). Some forms of AN formulated as explosives would have been covered under the 1994 RMP list rule, but the rule would not have included AN fertilizer, which was not classified as and was not intended to function as an explosive. However, the explosion at West Fertilizer has highlighted the explosive properties of AN fertilizer under certain conditions (heat, shock, contamination and/or confinement) and its potential to adversely impact communities if it decomposes and detonates.

Industry manufactures millions of tons of AN annually in the United States. High-density or fertilizer-grade AN, with Chemical Abstracts Service Registry Number (CASRN) 6484–52–2, is commonly used in fertilizer; low-density or technical-grade AN is used to manufacture explosives or blasting agents. Approximately 80% of AN is used in explosives and blasting agents and 20% is used as a fertilizer.

Blasting agents are relatively low sensitivity explosives which cannot be initiated by blasting caps and are unlikely to explode except under special conditions. A blasting agent is a fuel plus oxidizer, intended for blasting, and not otherwise classified as an explosive. Blasting agents are frequently formulated with AN as the oxidizer.

Ammonium nitrate/fuel oil (ANFO or AN/FO) is a blasting agent widely used in coal mining, quarrying, metal mining, and civil construction. Mining and construction sites that use ANFO may not be as likely to have explosions adversely affecting the public because they are often remote.

AN has an NFPA instability rating of 3, indicating it is capable of detonation, explosive decomposition, or explosive reaction; ignition requires a strong initiating source or heating the substance under confinement. Stored AN is generally stable, but explosions of AN can be severe and have resulted in many injuries and fatalities.

There are several examples of accidents involving AN. As discussed earlier, on April 17, 2013, an AN explosion at the West Fertilizer Company storage and distribution facility in West, Texas involving about 30 tons of AN killed 15 people and injured over 160 others. As an initial action, EPA and its partner agencies OSHA and ATF issued an updated chemical advisory on the safe storage, handling, and management of AN.[12]

The deadliest industrial accident in United States history was an AN explosion in Texas City, Texas, on April 16, 1947. In that case, the initial explosion of a ship carrying AN, and the subsequent chain reaction of fires and explosions in other ships and nearby oil-storage facilities, killed at least 581 people and injured thousands of others. The AN was coated with wax, a combustible material, to prevent caking. New process technologies and safe practices introduced in the 1950s eliminated the use of wax coatings and AN currently produced for fertilizer use contains less than 0.2 percent combustible material. Ammonium nitrate with more than 0.2 percent combustible substances is now regulated by DOT as an explosive material with specific storage requirements and restrictions in cargo vessels.

On September 21, 2001, a massive explosion occurred in a warehouse at the Azote de France fertilizer factory in Toulouse, France, involving 200–300 tons of AN, which was stored in bulk in a hangar. The explosion resulted in the death of 30 people, 2,500 injuries, the destruction of the factory, and an additional 10,000 buildings being heavily damaged. The exact cause of this accident remains unknown. Storage of incompatible material with AN is believed to have been a factor.

On December 13, 1994 at Terra Industries in Port Neal, Iowa, AN solution exploded in a neutralizer vessel in a manufacturing process that was in standby mode, causing four deaths.[13] The blast resulted in major plant damage, including damage to on-site ammonia tanks, creating an ammonia cloud that resulted in the evacuation of 2,500 people.

EPA is requesting information on how to best address the safe storage, handling and risk management of AN. Despite its widespread use as an explosive and as a fertilizer, AN explosions are rare, but when they do

[11] *http://ndep.nv.gov/bapc/capp/capmore.html.*

[12] Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate, EPA 550–S–13–001, published by EPA, OSHA, and ATF, August 2013. *http://www.epa.gov/oem/docs/chem/AN_advisory.pdf.*

[13] *http://www.epa.gov/oem/docs/chem/cterra.pdf.*

occur, can result in deaths, injuries, and extensive property damage.

Currently, AN is not a listed substance under the RMP regulation. 29 CFR part 1910.109(k)(2) requires that the manufacture of explosives shall also meet the requirements contained in § 1910.119, thus manufacturing of explosives containing AN would be covered under PSM regulations. OSHA does not regulate AN storage and handling by distributors and users under the PSM standard, but it does regulate certain processes and activities involving AN under other specific standards (see below). Therefore, under federal regulations, AN distributors, such as bulk fertilizer retailers, are not required to implement any RMP or PSM accident prevention program elements (such as conducting a process hazard analyses, developing written operating procedures, etc.), perform an off-site consequence analysis, or develop an emergency action plan or emergency response plan.

ATF regulates the storage and handling of AN as an explosive material (either as part of an explosive or as a blasting agent) (27 CFR 555.201–224). The ATF regulations specify construction requirements for storage magazines, limitations on the type and amount of material that can be stored in each type of magazine and minimum distances that must be maintained between AN in explosive materials and public receptors and between AN and explosives and blasting agents.

OSHA regulates the storage, handling, and transportation of AN when it is used in explosives, water slurries, gels or blasting agents (29CFR 1910.109 (a)–(h), (k)) or when stored on-site with explosives or blasting agents, including their storage at use sites and mixing and packaging operations. The requirements detail various procedures and safeguards that must be followed for these operations. The OSHA standard requires minimum specified separation distances between AN and explosives or blasting agents stored on the same site. Construction requirements for buildings and bulk storage bins containing blasting agents (which can contain AN) are also specified.

OSHA also regulates bulk storage of AN over 1,000 pounds in a building or structure in the form of crystals, flakes, grains, or prills including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures, but not blasting agents, containing 60 percent, or more, AN by weight, in 29 CFR 1910.109(i). This standard limits the dimensions of piles of bagged AN and bulk AN in storage bins, and specifies the conditions for storage and the type of the construction materials for storage bins. The standard does not specify minimum separation distances between stored AN and public receptors such as are required for explosives and blasting agents. The standard requires separation of AN from incompatible or combustible materials and use of fire-resistive building materials if combustible materials are stored within a certain distance. A building with more than 2,500 tons of bagged ammonium nitrate must be equipped with an automatic sprinkler system.

OSHA's PSM standard covers some reactive chemicals. Ammonium nitrate, although it is a reactive chemical (oxidizer) and met the original criteria that OSHA used to add substances for coverage, was not covered by the PSM standard. The Explosives and Blasting Agents standard is a specification standard based on a consensus standard, while PSM is a performance-based standard and would require employers to put management systems in place that would include requirements to evaluate hazards and follow industry recognized best practices. As explained above above, OSHA issued an RFI seeking, among other items, comments on potential revisions to its PSM standard and its Explosives and Blasting Agents standard. The RFI specifically invited comments on safe work practices for storing, handling, and managing ammonium nitrate and on regulatory requirements to improve its approach to preventing the hazards associated with ammonium nitrate. OSHA is working to determine whether ammonium nitrate hazards are best handled in the Explosives and Blasting Agents standard, the PSM standard, or a combination of both, and will pursue any appropriate regulatory changes as expeditiously as possible. As OSHA develops its approach to improve workplace safety associated with ammonium nitrate hazards, EPA will consider if additional action to protect the community is needed to complement OSHA regulations. EPA is considering whether the coverage provided to ammonium nitrate facilities will be sufficient or whether ammonium nitrate should be included in the RMP regulation.

Because past AN accidents with adverse effects off-site, such as blast waves, have typically involved its storage in large quantities, EPA could list AN on the RMP list with a high threshold in order to prioritize process safety requirements for those facilities and locations where large amounts of AN are stored. When EPA had included high explosives on the RMP list, the TQ was based on a trinitrotoluene (TNT) equivalent weight; EPA could determine a threshold amount for AN, based on a TNT-equivalent weight calculation adjusted for AN.[14] The RMP requirements for AN could be established at the statutory minima with more specific provisions tailored to particular types of facilities, e.g., manufacturers, fertilizer distributors and other facilities that have large amounts of explosives, blasting agents or fertilizers. EPA is authorized under CAA section 112(r)(5) to establish a greater TQ for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer. Therefore, farmers who hold AN for use as a fertilizer could be exempted entirely in the same way as EPA has exempted farmers holding ammonia for use as a fertilizer (see 40 CFR 68.125).

Alternatively, under CAA 112(r)(7)(A), EPA could require safe storage practices of solid AN forms similar to the practices required in the OSHA standard for Explosives and Blasting Agents at 29 CFR 1910.109(i) or in the NFPA 400 Hazardous Materials Code, Chapter 11. Promulgating regulations separate from the RMP requirements may be more appropriate to cover facilities whose handling of this chemical does not involve typical manufacturing and processing operations normally seen with chemicals that are hazardous gases and liquids, such as fertilizer distribution facilities. However, manufacturers of AN who handle molten and liquid AN in processes involving chemical reactions, at elevated temperature and pressure, or in process vessels, tanks, pumps and associated control equipment may be more appropriately covered by the RMP regulation.

EPA requests information on the following questions:

i. Are there safety gaps in the current regulations for AN that could be

[14] TNT equivalent-weight calculation is a method for estimating the quantity of an explosive required to produce blast effects at various distances from the source of the explosion. The method uses the scaling law of distances, which relates quantity of explosive material and distance for a given overpressure. For explosives other than TNT, an empirically-derived equivalency factor is used to account for differences between the explosive characteristics of the actual explosive and those of an equivalent weight of TNT. Additional information on EPA's threshold methodology for high explosives can be found in *the Technical Background Document, Development of Threshold Quantities for List of Regulated Substances for Accidental Release Prevention, Clean Air Act Section 112(r).* See: Technical Background Document for the Development of Threshold Quantities for List of Regulated Substances for Accidental Release Prevention, Clean Air Act Section 112(r). Original Docket# A–91–74, document # III–B–2, June 21, 1992.

addressed using regulations under CAA section 112(r)? Should EPA regulate AN under CAA section 112(r) authority to improve chemical safety practices at facilities handling AN? What types of AN and AN facilities should be subject to the RMP regulations to prevent chemical accidents involving AN that could have adverse effects, such as blast overpressure, on the public, environment and off-site property? Should EPA consider safety regulations to cover the storage and handling of AN fertilizer only and continue to rely on ATF regulations and OSHA standards to cover AN in explosives and blasting agents? What role should voluntary industry programs (such as the one undertaken by IME for high explosives) have in a decision on whether safety gaps exist that warrant regulation under the RMP? Please discuss the economic impacts associated with the potential regulation of AN under CAA section 112(r), including any special circumstances involving small entities that EPA should consider.

ii. Should EPA amend the RMP requirements to address the hazard posed by AN? If so, what specific requirements would be appropriate for AN? Alternatively, should EPA use its regulatory authority under CAA 112(r)(7)(A) to require more tailored safety steps for facilities handling AN and list AN at a high threshold to better focus these requirements on fewer holders of large quantities that pose the greatest risk? What would be the benefits of regulating AN under the RMP regulations as opposed to only maintaining the current SDS and hazardous chemical inventory reporting already required under EPCRA?

iii. If EPA were to regulate AN under 40 CFR part 68, what quantity of AN poses a sufficient hazard to be covered? What would be the basis for establishing this TQ?

iv. Does your facility store, handle, or manage AN? If so, in what form (e.g., solid, liquid) and in what grade (e.g., high density, low density)? If you are not a manufacturer of AN, how does your facility process or use AN? What quantities of AN are typically stored at your facility at one time?

v. Are there any other standards, including consensus standards, applicable to AN storage, handling, and management that your facility follows? If so, which ones?

vi. Please provide any data or information on accidents involving the storage, handling, and management of AN that affected people or property.

vii. Please provide data on the population surrounding AN sites, including socio-economic information and other environmental burdens on surrounding communities.

viii. If EPA were to regulate AN under CAA Section 112(r), should EPA exempt farmers who store AN for use as a fertilizer? How many farmers would be eligible for such an exemption? Should there be any limits on such an exemption, such as maximum quantity on-site at any given time? Please provide the reasoning and any available data supporting your views.

d. Adding Reactive Substances and Reactivity Hazards

Although the chemicals listed in 40 CFR 68.130 were listed based on their toxicity or flammability, a number of them could be considered reactive chemicals based on a variety of metrics, including consensus standard sources. For example, the RMP list currently includes three chlorosilanes listed as toxic substances.[15] These compounds are included on the list because their levels of acute toxicity based on animal studies met the RMP listing criteria. However, they primarily produce acute toxic effects on exposed populations because of their rapid and intensive reaction with moisture in the air to produce hydrogen chloride, which can cause acute injury to any body tissue contacted as well as nasal, throat, or lung irritation, coughing, wheezing, and shortness of breath. Nevertheless, while certain listed substances such as these are reactive, the RMP list does not specifically focus on reactive chemicals. There are other chemicals that do not meet the RMP listing criteria, but could potentially be listed based on the hazards of their reaction byproducts (e.g., other chlorosilanes that produce hydrochloric acid upon release to the air).

EPA has long been aware of the hazards associated with reactive chemicals. In the January 19, 1993 proposed rule for listing substances (58 FR 5102), we considered whether to include on the list chemicals whose reactive properties could cause effects, in the event of an accident, that would impact nearby communities. In order to meet the conditions in CAA section 112(r)(3) for the listing of substances, EPA sought to determine the common physical-chemical characteristics or properties that would be used as criteria to identify a set of chemicals to be listed and to provide the technical basis for these criteria. For toxic and flammable substances, the listing criteria included inherent properties of the chemical substances, such as physical state or boiling point, that are indicators of the potential to pose a severe threat to the community. EPA attempted to evaluate the hazards associated with reactive substances and develop an adequate technical basis to determine potential effects on the community. One difficulty is that it is not feasible for national listing decisions to take into account process- and site-specific factors, which can vary widely. EPA has instead addressed these factors in the accident prevention regulations (e.g., owners and operators implement hazard controls based on a PHA or hazard review that identifies the specific hazards of their regulated processes). Using criteria from other organizations, for example, an NFPA instability rating of 4 assigned to materials that are readily capable of detonation, explosive decomposition, or explosive reaction at normal pressures and temperatures provides important information but gives little indication of the potential impact on a community from an accident that takes place inside an industrial facility. The 1993 proposed rule requested comments from the public on approaches that could be used to evaluate the consequences to communities from incidents involving reactive substances. However, very few comments were received and no specific methods or listing criteria were identified by commenters. Several commenters suggested that a small number of highly reactive chemicals, specifically those that have toxic byproducts as a result of degradation or combustion, and have been involved in serious accidents, be added to the list. Several other commenters suggested deferring the listing of reactive substances based on the complexity of the technical issues, the lack of a methodology to screen reactive hazards, and the expectation that reactive substances are unlikely to migrate off-site.

Serious accidents involving reactive chemicals have called attention to their hazards and raised questions regarding whether reactive chemicals are adequately regulated. In response to a 1995 chemical explosion that killed five workers at Napp Technologies, Inc., in Lodi, New Jersey, OSHA and EPA investigated the accident and concluded in a jointly-issued report[16] that the explosion was most likely triggered by an uncontrolled chemical reaction of water, sodium hydrosulfite, and aluminum powder. However this

[15] These include methyltrichlorosilane (CASRN 75–79–6), dimethyldichlorosilane (CASRN 75–78–5), and trimethylchlorosilane (CASRN 75–77–4).

[16] EPA/OSHA, EPA/OSHA Joint Chemical Accident Investigation Report—Napp Technologies, Inc., Lodi, New Jersey (EPA–550–R–97–002, October, 1997).

investigation did not result in any changes in OSHA or EPA regulations.

In August 2000, after investigating a runaway reaction at Morton International in Patterson, New Jersey that injured nine employees, the CSB initiated a comprehensive review of reactive hazards nationwide and issued a final report [17] in 2002 with recommendations to reduce the number and severity of such incidents. The report recommended that EPA revise the RMP regulation to address catastrophic reactive hazards that have the potential to seriously impact the public, including those resulting from self-reactive chemicals and combinations of chemicals and process-specific conditions. It also recommended coverage of chemicals based on a class of highly reactive properties, similar to the way the existing PSM standard defines a class of flammable liquids or gases. The CSB argued that a performance-based approach to evaluating reactive hazards would allow for both a comprehensive analysis and flexibility in implementation, but cautioned that a proper analysis would require expertise in reactivity hazards.

CSB also recommended that EPA modify the accident reporting requirements in risk management plans and in ''RMP*Info'' (EPA's database for risk management plans) to define and record reactive incidents and add the term ''reactive incident'' to the four existing ''release events'' in EPA's current 5-year accident reporting requirements (Gas Release, Liquid Spill/Evaporation, Fire, and Explosion). According to CSB, structuring the information collection in this way would allow EPA and its stakeholders to identify and focus resources on industry sectors that experienced the incidents; chemicals and processes involved; and impacts on the public, the workforce, and the environment. Consequently, in 2004 EPA amended the format for risk management plan submissions to include uncontrolled chemical reactions on the list of possible accident causes that covered sources may select when completing five-year accident history reports. Since amending the format, 29 reactive chemical incidents have been reported in RMPs submitted to EPA. In total, these accidents resulted in zero deaths, 48 injuries, 190 people evacuated, approximately $3 million in off-site property damage, and approximately $33 million in onsite property damage. Processes in 16 different NAICS codes were involved in these incidents; however, processes in NAICS 325211 (Plastics Material and Resin Manufacturing) accounted for 9 of the incidents. No other NAICS code accounted for more than 3 incidents.

One approach to regulating reactive hazards is the approach adopted in the New Jersey Toxic Catastrophe Prevention Act (TCPA), which includes a ''List of Individual Reactive Hazardous Substances,'' as well as a list of ''Reactive Hazard Substances Mixture Functional Groups.'' [18] TCPA includes substances with certain functional groups and molecular structures that have been identified as highly reactive, based on scientific research and accident history. Under the TCPA, covered facilities must determine if any of the chemicals they are intentionally mixing include components on the Functional Group list. If so, then the facility must determine the heat of the reaction and the corresponding TQ for TCPA coverage. This approach takes into account not only certain specific chemicals, but also their overall reactivity in determining the level of coverage.

In 2010, the NFPA published the first edition of its Hazardous Materials Code (NFPA 400). NFPA 400 was subsequently updated in 2012 (i.e., NFPA 400 Hazardous Materials Code, 2013 Edition).[19] NFPA 400 specifies storage, use, and handling requirements for various categories of hazardous materials, including unstable (reactive) solids and liquids, water reactive solids and liquids, and others. EPA could adopt similar requirements as the basis for reactive hazards regulations.

EPA is considering including reactive chemicals on the RMP list and is seeking information on potential approaches to addressing reactive hazards, including the approach used in the TCPA, application of the requirements contained in NFPA 400, or others. EPA requests information on the following questions:

i. What are the best criteria to use in classifying reactive hazards? How do you identify a reactive chemical or a reactive mixture?

ii. Should EPA add reactive chemicals to the list of RMP-covered chemicals in 40 CFR 68.130? If so, which chemicals? What criteria should EPA consider using to establish TQs for reactive chemicals? Should EPA add only specific chemicals, or groups of chemicals defined by particular chemical characteristics?

iii. Should EPA list additional chlorosilanes as toxic substances on the RMP list due to their reactive hazard due to formation of hydrochloric acid when a chlorosilane is accidentally released into the air and reacts with moisture?

iv. If your facility is covered by the New Jersey TCPA, have those requirements been effective in protecting human health and the environment from reactive hazards? Please describe any economic impacts associated with TCPA coverage (e.g., costs and benefits, cost savings, shifts in usage of reactive chemicals, special circumstances involving small entities, etc.).

v. Should EPA revise the RMP regulation to use chemical functional groups similar to those in the TCPA [20] to define hazardous reactive mixtures? If so, which chemical functional groups should EPA use?

vi. Does your facility follow NFPA 400 for reactive hazards? If so, please describe the economic impacts associated with following NFPA 400 (e.g., cost of additional equipment, cost of additional training, benefits of quality management, special circumstances involving small entities, etc.). Is following NFPA 400 an effective way of protecting human health and the environment from reactive hazards? Please explain.

vii. Has your facility implemented a reactive-hazards management program other than a program specified by the TCPA and NFPA 400? If so, please describe your facility's program, whether it protects human health and the environment more or less than the TCPA and NFPA 400, whether it is voluntary or mandatory and, if the latter, under what authority, any economic impacts associated with the program, and any special circumstances involving small entities.

viii. What alternative regulatory approach to TCPA or NFPA 400, if any, should EPA consider using to address reactive hazards? What would be the economic impacts of this approach and would there be any special circumstances involving small entities? Are there specific requirements that EPA should consider adding to the RMP regulations to ensure that owners and

[17] CSB, Hazard Investigation—Improving Reactive Hazard Management, U.S. Chemical Safety and Hazard Investigation Board (Report No. 2001–01–H, October 2002). *http://www.csb.gov/assets/1/19/ReactiveHazardInvestigationReport.pdf.*

[18] The New Jersey Toxic Catastrophe Prevention Act is the state's process safety regulation. It adopts the federal RMP requirements, and includes additional state-level requirements. See *http://www.nj.gov/dep/rpp/brp/tcpa/index.htm.*

[19] *http://www.nfpa.org/catalog/product.asp?pid=40013&cookie_test=1.*

[20] The definition of ''reactive hazard substance (RHS) mixture'' in the TCPA references a list of chemical functional groups specified in N.J.A.C. 7:31–6.3(a), Table I, part D, Group II. Whether any of the chemical functional groups are present determines in part coverage of an RHS mixture under the TCPA.

operators adequately manage reactive hazards?

ix. Please provide any data or information on accidents, near misses, or other safety-related incidents involving reactive hazards not covered under the existing RMP regulation. What reactive-hazards management requirements might have prevented these incidents if they had been included in the RMP regulation?

e. Adding Other Categories of Substances

This section addresses substances which are not traditionally classified as highly toxic, flammable, or explosive but that have nonetheless caused or contributed to serious accidents. Other categories of substances beyond highly toxic and flammable liquids and gases could cause death, injury, or serious adverse effects to human health or the environment in the event of an accident. For example, certain types of flammable and explosive solids and non-volatile liquids can explode and cause blast waves that have the potential to injure people and cause property damage beyond a facility's fence line. Such explosions or detonations could involve categories of chemicals not currently regulated as RMP substances or previously discussed in this section as potential additions to the RMP list. Examples of these include organic peroxides, oxidizers, combustible dusts or other flammable solids.

EPA requests information on the following questions:

i. Should EPA consider adding organic peroxides, oxidizers, combustible dusts, flammable solids, or other additional types of chemicals to the RMP list? Are there any particular chemicals belonging to these or other classes which present a high hazard that could cause adverse effects beyond a facility's fence line in the event of an accidental release?

ii. If a particular new category of chemicals should be considered for inclusion on the RMP list, what criteria should be used to prioritize the hazard(s) and determine which chemicals should be listed?

iii. If EPA were to add combustible dusts to the lists of covered chemicals, are there categories of dusts, such as agricultural dusts (e.g., grain dust, pesticide dust, etc.), that should be excluded? What factors, such as existing handling practices, accident history, and potential risk to surrounding communities should EPA consider in evaluating potential exclusions?

f. Removing Certain Substances From the List or Raising Their Threshold Quantity

EPA is also seeking information on whether certain substances should be removed from the current list of regulated substances. There are six RMP chemicals (four toxic, two flammable) for which EPA has never received a RMP report. The four toxic chemicals are arsenous trichloride (CASRN 7784–34–1), cyanogen chloride (CASRN 506–77–4), sulfur tetrafluoride (CASRN 7783–60–0), and tetramethyl lead (CASRN 75–74–1). The two flammable chemicals are: chlorine monoxide (CASRN 7791–21–1) and ethyl nitrite (CASRN 109–95–5). EPA's 2012 Chemical Data Reporting (CDR) information on the production and use of chemicals manufactured or imported into the United States also showed no facilities reporting any data for these six chemicals, when searched by CASRN.[21] EPA's Envirofacts system,[22] which contains reporting on chemicals from the various environmental databases and reporting systems managed by EPA, also did not show any reports for these six substances, when searched by CASRN. A search of the E-Plan database, which contains EPCRA Tier II Emergency and Hazardous Chemical Inventory reports for most states, showed that four of the six chemicals were reported in E-Plan for filing year 2012, but only one facility each reported for three of the chemicals and five facilities reported for sulfur tetrafluoride. However, E-Plan only contains reports from about 40 states, and for several of these, the database does not contain complete information. The search results show that four of the six chemicals are in commerce, although the Tier II amounts reported on site were below RMP reporting thresholds.

One of the sixteen substances mandated by Congress for the initial listing of regulated substances for accident prevention was toluene diisocyanate (TDI). In order to ensure that all forms of TDI were listed, the RMP list of toxic substances contains three listings representing this chemical, including both the 2,4 and 2,6 isomers (also listed as EHSs) and unspecified isomers or mixture of isomers (not listed as an EHS), all of which have distinct separate CAS Registry numbers.

Toluene, 2,4-diisocyanate	CASRN	584–84–9
Toluene, 2.6-diisocyanate	CASRN	91–08–7
Toluene diisocyanate, unspecified isomer	CASRN	26471–62–5 [23]

Although the vapor pressure for TDI is relatively low at ambient temperature (< 0.5 mm Hg) and does not meet the vapor pressure listing criteria of ≥ 10 mm Hg for a regulated toxic substance, EPA believed that the language of CAA section 112(r)(3) precluded the Agency from omitting TDI from the initial list of RMP substances. The Senate Report on its version of the 1990 CAAA [24] says ''the Administrator is not authorized to remove substances from the initial list.'' The format of CAA 112(r)(3), which mandates the initial list contain certain chemicals and requires a more expansive list by rulemaking, first appears in the Senate Bill. However, the statute itself does not prohibit later deletions of substances that were mandated for inclusion on the initial list. The final enacted CAA section 112(r)(3) authorizes both additions and deletions from the list, in contrast to the version in the Senate Report that only authorized additions.[25] The enacted language is similar to the structure of the hazardous air pollutant (HAP) ''initial list'' under CAA section 112(b), which authorizes revisions and deletions and is cross-referenced in CAA section 112(b)(3) for its revision procedures. Fifty-three accidents involving TDI have been reported in RMP accident history reports since 1995, but none of these resulted in fatalities or off-site injuries.

Currently the TQ for all three TDI listings is 10,000 pounds. EPA is considering whether the TQ for TDI

[21] *http://www.epa.gov.cdr/*. However, manufacturing or production volume data was only required for CDR when 2011 site-specific production volume for reportable chemicals equaled or exceeded 25,000 pounds. Chemicals manufactured only for non-TSCA uses such as pesticides or chemicals regulated by the FDA are not required to be reported under CDR. Also, small manufacturers (including importers) are generally exempt from CDR requirements if their annual company sales do not exceed certain limits.

[22] *http://www.epa.gov/enviro/index.html*.

[23] This CASRN is used for the ''generic TDI'' for any mixture of the 2,4-TDI and 2,6-TDI isomers, of varying ratio between the two specific isomers.

[24] Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989), page 220.

[25] See Senate Report at 560 (section 129(c)).

should be higher because its much lower vapor pressure would result in a lower volatilization rate and less potential for an air release. The current TQs were assigned based on a ranking scheme using a Level of Concern (LOC) based on acute toxicity and the potential for airborne dispersion. For each chemical, a ranking factor was calculated that equaled the LOC divided by an air dispersion factor (V). Chemicals were assigned TQs of 500, 1,000, 2,500, 5,000, 10,000, 15,000 or 20,000 pounds based on the order of magnitude ranges of the ranking factors. The LOC was based on the Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute of Occupational Safety and Health (NIOSH) or an approximation of the IDLH based on animal toxicity data. For gases, V = 1, while for liquids, V was based on a volatilization model using the molecular weight and boiling point of the chemical. The TQ methodology is described in detail and the ranking factors for each chemical are provided in the Technical Background Documents for the Development of Threshold Quantities,[26] which are available in the public docket for this notice. The minimum level of TQ was set at 500 pounds to represent a drum sized container. The highest TQ of 20,000 pounds represented typical handling quantities and allowed the range of thresholds to better reflect the relative hazards among the listed toxic chemicals.

Applying EPA's TQ ranking methodology, the ranking factor for TDI was 0.73, which was midrange for the toxic substances assigned the TQ of 10,000 pounds. Other toxic chemicals assigned the 10,000 pounds TQ had ranking factors ranging from 0.3 to 0.9. The acute toxicity of TDI is relatively high compared to most of the other toxic chemicals. The LOC toxicity value of TDI is 0.07 g/m^3 (10 ppm) and the LOC toxicity values for the other toxic chemicals range from 0.0025 g/m^3 to 4.9 g/m^3 (the lower the LOC toxicity value, the more toxic the chemical).

Although the vapor pressure of TDI is much less than the cutoff vapor pressure of 10 mm Hg used to select other liquid toxic substances, the air dispersion factor (V) does not use the vapor pressure at ambient temperature to determine the volatilization rate. Instead, the equation for calculating V uses the boiling point of the chemical to reflect worst case conditions of accidental releases that are likely to involve heat (e.g., fires, exothermic runaway reactions, or upset process conditions), which cause more rapid volatilization of the liquid.

To assign TDI a TQ based on its vapor pressure, a different rationale would have to be used for determining the threshold such as using ambient liquid temperature conditions instead of boiling liquid temperatures for calculating the air dispersion factor V. EPA is requesting information on whether the methodology for assigning TQs should be changed to account for the much lower vapor pressure of TDI, and if so, information on a rationale for how it should be done.

One consideration for retaining TDI on the list of substances despite its low vapor pressure is that TDI is known as a potent dermal and lung sensitizer. In sensitized individuals, exposure to even small amounts of diisocyanates may cause allergic reactions such as asthmas and severe breathing difficulties. The LOC toxicity value for TDI was based on a 1990 IDLH value of 10 ppm, which has since been revised to 2.5 ppm.[27] The Acute Exposure Guideline Level–2 (AEGL–2) for a 1-hour exposure has been established at 0.083 ppm [28] which is a concentration above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape (see section II.D.9 later for further discussion about AEGLs). However, neither the revised IDHL or AEGL values are based on exposures of individuals or animals sensitized to TDI. Thus, some accidental releases of TDI that would not cause severe acute health effects in most individuals, may trigger breathing problems or severe allergic reactions in sensitized individuals. The sensitizing nature of TDI should be considered when evaluating whether to raise the TQ of TDI and perhaps should be considered as a reason for lowering the TQ instead of raising it.

One of the flammable chemicals on the RMP list, 1,3-pentadiene (CASRN 504–60–9), fails to meet the flammability criteria discussed earlier in this section. Its inclusion in the RMP list of flammable substances was due to a typographical error in the boiling point of the substance as reported by one reference source. NFPA had listed the boiling point for 1,3-pentadiene as −43 °C,[29] but according to other data sources, it is actually + 43 °C, which is above the cutoff of 37.8 °C for an NFPA flammability 4 rating. NFPA has since corrected the boiling point and changed the flammability rating to 3.[30] Therefore, 1,3- pentadiene does not meet the flammability and volatility criteria for RMP-listed flammable substances.

EPA requests information on the following questions:

i. Would it be appropriate for EPA to delete TDI (a substance mandated by Congress to be included on the initial RMP list) from the RMP toxic substances list because its vapor pressure does not meet the vapor pressure listing criteria established by EPA?

ii. If it is not appropriate to delete TDI, would it be appropriate for EPA to continue to list TDI on the RMP list but with a higher TQ for RMP reporting? Should the methodology for assigning TQs account for the much lower vapor pressure of TDI, and if so, how should this be done? Currently, the TQ for all three TDI listings is 10,000 pounds.

iii. If it is not appropriate to delete TDI because it is a sensitizer, should EPA continue to list TDI on the RMP list but with a lower TQ because of its unique toxicity, and if so, what should be the basis for setting a lowered TQ?

iv. Are there other listed substances that should have a higher TQ? If so, which ones, what are the appropriate TQs, and why?

v. Should EPA delete from the RMP list any of the six substances for which the Agency has not received any RMP report if the Agency believes that they are not widespread in commerce or only stored in quantities well below the RMP TQ? EPA requests any available information about the extent of these six chemicals' manufacture and use in commerce, including any annual amounts manufactured, imported or used in the U.S.

vi. Is there any reason that EPA should not delete 1, 3-pentadiene from the RMP list as it does not meet the listing criteria for flammable substances and was erroneously listed? Are there any other RMP substances that are known to be listed based on erroneous data?

[26] USEPA. June 21, 1992. Technical Background Document for the Development of Threshold Quantities for List of Regulated Substances for Accidental Release Prevention, Clean Air Act Section 112(r). Original Docket# A–91–74, document # III–B–2.

USEPA. January 14, 1994. Technical Background Document Supporting Development of Threshold Quantities for Regulated Substances under Section 112(r) of the Clean Air Act. Original Docket# A–91–74, document # V–B–2.

[27] *http://www.cdc.gov/niosh/idlh/584849.html.*

[28] *http://www.epa.gov/oppt/aegl/pubs/tsd47.pdf.*

[29] NFPA. 1994. NFPA 325 Guide to Fire Hazard Properties of Flammable Liquids, Gases and Volatile Solids, 1994 ed. National Fire Protection Association, Pg 325–77.

[30] NFPA. 2010. NFPA Fire Protection Guide to Hazardous Materials, 14th ed., Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids. National Fire Protection Association. Pg. 325–95.

g. Lowering the Threshold Quantity for Substances Currently on the List

EPA is also seeking information on whether the TQ for any substances currently on the list should be reduced:

i. Are the current TQs protective of human health and the environment, or are there certain substances for which the TQ is too high? If so, which substances? For such substances, what TQ should EPA establish and what would it be based on?

ii. What would be the economic impacts of any lowering of the TQ which might be warranted? Are there any special circumstances involving small entities that EPA should consider with respect to lowering of a TQ?

2. Additional Risk Management Program Elements

Approaches to chemical process safety have continued to evolve since both the RMP regulation and OSHA PSM standard were promulgated. New management system elements and best practices are now being used to address human health, worker safety and environmental protection. Lessons learned from data collected in RMP submissions regarding safety management systems have also informed EPA's perspective on the issue. The Agency is requesting information on the management system elements OSHA has identified in their RFI, but with a focus on their applicability to the RMP requirements, and how they can enhance the protection of human health and the environment.

Like OSHA, EPA is considering three elements taken from the Risk Based Process Safety Program recommended by the Center for Chemical Process Safety (CCPS): [31] (1) Measurements and Metrics; (2) Management Review and Continuous Improvement; and (3) Process Safety Competency. A ''Measurements and Metrics'' element would require the facility to establish performance and efficiency indicators to track the effectiveness of the risk management system and to identify opportunities for improvement of its elements and work activities. This element would guide facilities in measuring the real-time performance of their process safety management systems An example of a measurement and metrics indicator would be to track the frequency of process upsets and near-miss accidents. A ''Management Review and Continuous Improvement'' element would focus on ongoing ''due diligence'' management reviews that fill the gap between day-to-day work activities and periodic formal audits. This element would require facilities to regularly evaluate the management systems in place, as opposed to waiting for an incident to occur, or for scheduled audits to identify deficiencies. A ''Process Safety Competency'' element would encompass three interrelated activities: (1) To continuously improve on knowledge and competency, (2) to ensure appropriate information is available to those who need it, and (3) to consistently apply lessons learned. The main focus of this competency element is organizational learning, so that the process knowledge can be applied to situations in order to effectively manage risk.

The Agency is also requesting information on two additional management-system elements that were identified by OSHA in their review of relevant safety standards promulgated by other federal agencies. Specifically, the Bureau of Safety and Environmental Enforcement (BSEE) promulgated revisions to their Safety and Environmental Management Systems (SEMS II) requirements (78 FR 20423; April 5, 2013) to help ensure the safe operations of their regulated facilities. The revisions included a number of management-system elements not addressed in the RMP regulation. The two elements the Agency is focusing on are a ''Stop Work Authority'' and an ''Ultimate Work Authority.'' In its SEMS II Fact Sheet,[32] BSEE describes these elements as follows:

- Developing and implementing a stop work authority that creates procedures and authorizes any and all offshore industry personnel who witness an imminent risk or dangerous activity to stop work.
- Developing and implementing an ultimate work authority that requires offshore industry operators to clearly define who has the ultimate work authority on a facility for operational safety and decision-making at any given time.

While the requirements under SEMS II focus on offshore facilities under the jurisdiction of BSEE, the concept of requiring these elements may be applicable to facilities subject to the RMP regulation. Established procedures for any and all employees on the facility to implement a stop work authority when witnessing an activity that creates a threat of danger, and clearly defined requirements establishing who has the ultimate authority on the facility for operational safety and decision making at any given time could help to better protect human health and the environment.

In addition to the management system elements identified in the OSHA RFI, EPA is also interested in receiving public comment on whether there are other accident prevention elements that should be considered for inclusion in the RMP regulation. The Agency notes that both the CCPS Guidelines for Risk Based Process Safety and the BSEE SEMS regulations contain additional management system elements not present in the RMP regulation. One such element is ''conduct of operations'' which CCPS defines as ''the execution of operational and management tasks in a deliberate and structured manner.'' Conduct of operations includes a variety of measures such as formal communications between workers, work groups, and work shifts. It also involves establishing clear rules governing access to key process areas, such as control rooms, performing regular tours or rounds to monitor equipment status and keeping written shift logs of equipment status and ongoing process activities, maintaining clear and accurate labeling for process equipment, and maintaining good housekeeping in process areas.

Another element contained in the CCPS Guidelines is ''process safety culture.'' CCPS defines process safety culture as ''the combination of group values and behaviors that determine the manner in which process safety is managed.'' Poor safety culture can lead to accidents by allowing production pressures to overshadow safety concerns, or by limiting the free exchange of important safety information among plant personnel. Safety culture has been implicated in recent serious accidents, such as the August 2012 accident at the Chevron refinery in Richmond, California. In that accident, the CSB found indications that a weak safety culture may have led to the normalization of deviance in the refinery's mechanical integrity management system. Consequently, the California Interagency Working Group on Refinery Safety published a report concluding that both the California OSHA PSM requirements and the California Accidental Release Prevention RMP requirements should be strengthened to require California refineries to conduct safety culture assessments at least every three years.[33]

[31] American Institute of Chemical Engineers, Center for Chemical Process Safety, *Guidelines for Risk Based Process Safety,* New York, Wiley, 2007.

[32] *http://www.bsee.gov/Regulations-and-Guidance/Safety-and-Environmental-Management-Systems-SEMS/Fact-Sheet/.*

[33] California Interagency Working Group on Refinery Safety: *Improving Public and Worker*

Continued

The BSEE SEMS regulations contain requirements to conduct a ''Job Safety Analysis.'' BSEE indicates that the Job Safety Analysis (JSA) is an operations/task level hazard analysis technique used to identify risks to personnel associated with their job activities. The Agency is requesting public comment on whether these or other additional management system elements should be added to the RMP regulation, and whether and how these elements relate to prevention of accidental releases.

Additionally, the Agency seeks public comment on whether management system elements that are currently contained within the RMP regulation should be modified, clarified or strengthened. For example:

• Contractors are increasingly used in a variety of roles at chemical process facilities, yet the RMP rule imposes fewer safety requirements on contractor owners and operators than on the owners and operators of the regulated stationary source. In October 2007, five contractor workers were killed at Xcel Energy, in Georgetown, Colorado, when a fire occurred inside a tunnel at the company's hydroelectric power plant. The CSB found that inadequate contractor safety practices and oversight contributed to the accident; [34]

• The RMP rule requires owner/operators to conduct a Process Hazard Analysis (PHA) for Program 3 processes and a hazard review for Program 2 processes. PHAs and hazard reviews are intended to identify potential equipment malfunctions or human errors that could cause an accidental release, and safeguards needed to prevent such malfunctions and errors. However, the rule does not explicitly describe the types of failure scenarios or damage mechanisms that must be considered during PHAs and hazard reviews, and during some compliance inspections EPA has reviewed PHAs and hazard reviews that did not address failure scenarios such as natural disasters (e.g., floods, earthquakes, hurricanes, etc.), corrosion, vehicle collisions, and others. Additionally, the rule requires hazard reviews to be ''updated'', and PHAs to be ''updated and revalidated'' at least every five years, but does not clearly define what is required in order for a hazard review to be updated or for a PHA to be updated and revalidated. EPA is interested in receiving comment on whether PHA and hazard review requirements should be clarified, and whether hazard review and PHA updates should be required more frequently than every five years, or whether certain events should trigger hazard review or PHA updates prior to the next scheduled 5-year update.

• The Pre-Startup Review element (section 68.67) requires the owner or operator to perform a pre-startup review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information. However, the rule does not clearly state what modifications would require a change in process safety information. Also, EPA notes that process unit startup is a significantly more hazardous period compared to normal process operations, and that serious accidents such as the March 23, 2005 explosion at the BP America refinery in Texas City, Texas have occurred during process startup even when no significant equipment modifications were made to the process during the preceding turnaround.

EPA requests information on any additional management-system elements or on potentially modifying, clarifying or expanding existing elements, including those discussed in this RFI, which would serve to improve protection of human health and the environment. The Agency welcomes data and information on management-system elements from consensus standards, safety organizations, federal standards, or other sources that could increase process safety if the RMP regulation were expanded to include them. The Agency invites the public to respond to any questions for which they have specific knowledge, data, or information, regardless of their involvement in RMP-regulated operations. Specifically, EPA requests information on the following questions:

a. Does your facility follow any management-system elements not required under part 68 for RMP-regulated operations? If so, please describe the additional management-system elements, the safety benefits, any economic impacts associated with following the elements, and any special circumstances involving small entities.

b. Would expanding the scope of the RMP regulation to require additional management-system elements, or expanding the scope of existing RMP management-system elements, improve the protection of human health and the environment? Should EPA require safety culture assessments, job safety analyses, or any of the other new management system elements described above? If so, please describe the elements, the safety benefits, any economic impacts associated with expanding the scope of the RMP regulation in this way, and any special circumstances involving small entities that EPA should consider. Would current staff at a facility be able to implement these additional elements or would new staff need to be hired?

c. In systems using management and metrics, how do facilities develop useful leading indicators? Do you track the frequency of events such as process upsets, accidental releases, and ''near miss'' incidents? Does tracking such events allow managers and employees to make changes that prevent accidental releases? What other metrics and indicators do you use, and how do they help prevent releases?

d. Would requiring RMP facilities to conduct periodic safety culture assessments meaningfully strengthen the safety culture incentives that already exist, such as avoidance of deaths, injuries, property and environmental damage, production loss, community impacts, damage to company reputation, etc., that may result from accidents?

e. Would expansion of the RMP employee participation provision to include requirements such as the SEMS II stop-work authority, or other efforts to involve employees in all management-system elements, enhance protection of human health and the environment?

f. Are there any other management-system elements in the existing RMP regulation that EPA should expand or clarify (e.g., a new requirement that facilities perform a root-cause analysis for incidents under § 68.81, clarify PHA and hazard review requirements, require more frequent PHA and hazard review updates, strengthen contractor requirements, or require pre-startup reviews prior to all process startups)? If so, please describe the additional requirements, the safety benefits, any economic impacts associated with expanding the RMP regulation in this way, and any special circumstances involving small entities that EPA should consider.

g. Are there any data or information on accidents, near misses, or other safety-related incidents that the facility could have prevented by following management-system elements not currently required under the RMP regulation?

h. What would be the paperwork burden associated with the revisions to management-system elements discussed above? What special skills or training would employees need to implement

Safety at Oil Refineries, California Environmental Protection Agency, February 2014, *http://www.calepa.ca.gov/Publications/Reports/2014/RefineryRpt.pdf.*

[34] CSB, Investigation Report—Xcel Energy Hydroelectric Plant Penstock Fire, U.S. Chemical Safety and Hazard Investigation Board (Report No. 2008–01–I–CO, August 2010). *http://www.csb.gov/assets/1/19/Xcel_Energy_Report_Final.pdf.*

these elements, including associated reporting and recordkeeping requirements? What would be the costs of additional reporting and recordkeeping requirements, including costs for worker training and any required data management system upgrades?

3. Define and Require Evaluation of Updates to Applicable Recognized and Generally Accepted Good Engineering Practices

The OSHA PSM standard's references to recognized and generally accepted good engineering practices (RAGAGEP) are almost identical to those contained in Subpart D of 40 CFR part 68 (i.e., Program 3 Prevention Program). § 68.65(d)(2) requires the owner or operator to ''document that equipment complies with recognized and generally accepted good engineering practices.'' At facilities with ''existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use,'' § 68.65(d)(3) further requires the owner or operator to ''determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.'' These requirements parallel the requirements in paragraphs (d)(3)(ii) and (d)(3)(iii) of § 1910.119, respectively, with the only difference being that OSHA uses the term ''employer'' where EPA uses the term ''owner or operator.'' The RMP rule and PSM standard also contain identical references to RAGAGEP in § 68.73/ § 1910.119(j) (i.e., Mechanical Integrity). Additionally, Subpart C of 40 CFR part 68 (i.e., Program 2 Prevention Program) contains references to RAGAGEP in § 68.48 (Safety information) and § 68.56 (Maintenance).

EPA requests information on the following questions:

a. What does your facility use as a definition for RAGAGEP? Would adding a definition for RAGAGEP to the RMP rule improve understanding of RMP requirements and prevent accidental releases? If so, what specific definition for RAGAGEP should EPA add to the RMP rule? What would be the economic impacts of adding such a definition?

b. From what sources (e.g., codes, standards, published technical reports, guidelines, etc.) does your facility select applicable RAGAGEP for operations covered under the PSM standard?

c. Does your facility evaluate updates to its selected RAGAGEP? If so, how does your facility monitor any updates, and how often do you evaluate them?

d. Please provide any data or information on accidents, near misses, or other safety-related incidents involving failure to evaluate and/or implement updates to applicable RAGAGEP for RMP-covered processes. Would requiring employers to evaluate and/or implement updates to applicable RAGAGEP prevent such accidental releases?

e. Should owners or operators covered by the applicable provisions of the RMP regulation be required to evaluate updates to applicable RAGAGEP? Should owners and operators be required to comply with new RAGAGEP requirements that occur after the owner or operator's initial compliance with the applicable provision of the RMP regulation? How would such updates or new requirements be identified? What would be an appropriate time period in which to conduct this evaluation and/or to comply with updated RAGAGEP? What would be the economic impacts of this change?

f. Would a requirement to evaluate updates to applicable RAGAGEP be more appropriate in another paragraph of the RMP rule? For example, should such a requirement become part of the Process Hazard Analysis revalidation requirements at § 68.67(f), or the management of change requirements at § 68.75? How would EPA incorporate such a requirement for Program 2 processes?

4. Extend Mechanical Integrity Requirements To Cover Any Safety-Critical Equipment

EPA is interested in receiving information on whether the scope of the mechanical integrity provisions of the RMP rule should be expanded to cover the mechanical integrity of any safety-critical equipment, and whether additional mechanical integrity requirements should be added to the rule's provisions. In its RFI, OSHA notes that the mechanical integrity provisions of the PSM standard apply to six specific categories of equipment, including pressure vessels and storage tanks, piping systems (including piping components such as valves), relief and vent systems and devices, emergency shutdown systems, controls (including monitoring devices and sensors, alarms, and interlocks), and pumps. While these categories of equipment encompass most safety-critical equipment within regulated processes, during some compliance inspections EPA has observed that facilities have failed to apply mechanical integrity program measures to certain additional types of equipment and systems that could reasonably be judged to be critical to process safety. Examples of such equipment would include computer software systems that interact with process components, electrical power systems, and other utility systems that interact with pumps, valves, or control systems.

EPA notes that the RMP Program 2 maintenance requirements, which were intended as a streamlined version of the mechanical integrity requirements for Program 3 processes, apply to all process equipment, rather than being restricted to specific categories of equipment. This potentially causes the unintended result where certain aspects of a process subject to Program 2 must meet more rigorous maintenance requirements than the same equipment located in a Program 3 process. EPA is interested in receiving feedback on whether expanding the scope of the Program 3 mechanical integrity requirements or reducing the scope of the Program 2 maintenance requirements would appropriately address this potential discrepancy.

In addition to expanding the scope of the rule's existing mechanical integrity provisions to cover any safety critical equipment, EPA is also interested in whether additional requirements should be added to this section, or whether any existing requirements need to be clarified. For example, emergency shutdown systems are one type of process equipment covered under the rule's mechanical integrity provisions. However, the regulation does not explicitly require that all covered sources install emergency shutdown systems.

EPA requests information on the following questions:

a. Should EPA amend the mechanical integrity provisions of the RMP rule to explicitly cover all safety critical process equipment? If so, what type(s) of equipment? Did you identify safety-critical equipment not explicitly covered under § 68.73? If so, how did your facility determine that the equipment was safety-critical, and does your facility treat the equipment as if it were RMP-covered for safety or other reasons? Did you identify the equipment as safety-critical through an RMP process hazard analysis?

b. Please provide any data or information on accidental releases, near misses, or other safety-related incidents related to the mechanical integrity of safety-critical equipment not explicitly covered under § 68.73.

c. Would expanding the scope of § 68.73 to explicitly cover the integrity of all equipment critical to process safety make it more likely to prevent accidental releases?

d. Should EPA add additional requirements to the mechanical integrity provisions, or clarify any existing

provisions? For example, should the Agency require that certain types of covered facilities install emergency shutdown systems, such as redundant power supplies, emergency flares, vents, or scrubbers, etc., in order to prevent accidental releases resulting from uncontrolled emergency shutdowns?

e. Are there any other provisions of this section that should be enhanced or clarified? Does labeling § 68.73 as ''Mechanical Integrity'' cause owners and operators to disregard or neglect the maintenance, functionality, or integrity of process components that would not typically be considered ''mechanical'' components, such as electrical and computer systems?

f. What would be the economic impacts of revising the mechanical integrity provisions as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to revising the mechanical integrity provisions of the RMP?

5. Require Owners and Operators To Manage Organizational Changes

In its RFI, OSHA notes that while the PSM standard requires employers to establish and implement written procedures to manage change, including all modifications to equipment, technology, procedures, raw materials, and processing conditions other than replacement in kind, the standard does not explicitly require employers to follow management-of-change procedures for organizational changes, such as changes in management structure, budget cuts, or personnel changes. However, OSHA highlights a policy interpretation indicating that it is OSHA's view that the PSM standard does cover organizational changes if the changes have the potential to affect process safety. Additionally, OSHA notes the 2005 BP Texas City Refinery accident, where the CSB identified a lack of organizational management of change as a significant causal factor in the accident.

The RMP rule contains management of change requirements for Program 3 processes (see § 68.75) that are virtually identical to the PSM standard. Therefore, EPA is also interested in receiving public comment on whether the RMP rule's management of change requirements should be expanded to include management of organizational changes.

EPA requests information on the following questions:

a. What do you consider to be an organizational change within the context of process safety management practices? For example, would you consider the following, or similar, changes to be organizational changes: Reducing the number of operators in a shift; changing from 5-day to 7-day operations; changing from 8-hour to 12-hour operator shifts; replacing a unit manager; reducing the facility operations or maintenance budget; relocating a technical group to a remote corporate location; changing a supervisory or compensation structure; or hiring contractors to do work formerly performed by employees of the regulated facility? Are there other examples of organizational changes that may be relevant to safety management practices?

b. If your facility has established and implemented written procedures for management of organizational changes, please describe any economic impacts associated with the procedures. Please note any implementation challenges that may be associated with requiring that such procedures be developed and followed.

c. Would clarifying § 68.75 with an explicit requirement that employers manage organizational changes prevent accidental releases? What would be the economic impact of such a clarification? Are there any special circumstances involving small entities that EPA should consider with respect to this option?

d. Please describe any organizational changes made in your facility that have had the potential to affect process operations. Were management-of-change procedures followed before making the changes?

e. What do you consider to be the best safety practices concerning management of organizational change?

f. Please provide any data or information on accidents, near misses, or other safety-related incidents involving the failure to manage organizational change. Would following management-of-change procedures under § 68.75 have prevented these incidents?

6. Require Third-Party Compliance Audits

Sections 68.58 and 68.79 of the RMP regulation (Program 2 and 3 Compliance Audits) are almost identical in language to that found in 1910.119(o) of the OSHA PSM standard, with PSM's focus on worker safety and RMP's on protecting human health and the environment. Both section 68.58 and 68.79 require that ''the owner or operator shall audit the compliance with the provisions of the subpart at least every three years.'' In addition, both require that ''the compliance audit shall be conducted by at least one person knowledgeable in the process.'' Neither OSHA nor EPA requires employers to use a third-party in conducting compliance audits.

There may be advantages to third-party audits. For example, OSHA's RFI discusses CSB's findings concerning a lack of rigorous compliance audits in the 2005 BP Texas City Refinery explosion accident. OSHA's settlement with BP Texas City required BP to retain a third-party compliance auditor with adequate experience.[35] The CCPS argues that experienced third-party auditors, like those provided by consulting companies, can provide the most objectivity.[36]

Additionally, BSEE's Safety and Environmental Management Systems (SEMS) standard, 30 CFR 250, Subpart S, requires that audits be conducted by independent third-parties subject to BSEE approval, or to avoid conflict of interest, personnel that are considered to be qualified by the employer. In their revisions to the SEMs II final rule, BSEE discussed its third-party-auditing requirements.

EPA seeks information on whether to revise 40 CFR 68.58 and 68.79 to require facility owners and operators to use a third-party for compliance audits, on whether requiring a third-party auditing process would increase protection of human health and the environment, and on whether the existing compliance audit requirements are sufficiently clear or if changes should be made to strengthen the audit requirements. Specifically, EPA requests information on the following questions:

a. Does your facility use a third-party for conducting compliance audits under § 68.58 and § 68.79 for safety or other reasons? What was the basis for that decision? How has it affected the overall safety record of your facility?

b. Please provide any data or information on accidents, near misses, or other safety-related incidents that could have been prevented by conducting more effective compliance audits for operations covered under § 68.58 and § 68.79. What were the deficiencies in those audits? Were the audits in question conducted by in-house staff or a third party?

c. Would revising § 68.58 and § 68.79 to require owners and operators of RMP-regulated facilities to use a third-party for compliance audits help prevent accidental releases? What would be the economic impacts of revising § 68.58

[35] United States of America Occupational Safety and Health Administration, BP Products North America Inc. Settlement Agreement, September 21, 2005.

[36] American Institute of Chemical Engineers, Center for Chemical Process Safety, Guidelines for Risk Based Process Safety, New York, Wiley, 2007.

and § 68.79 in this way (e.g., typical consultant fees, additional work hours required, special circumstances involving small entities, etc.)?

d. Should EPA revise § 68.58 and § 68.79 to require owners and operators to use compliance auditors (internal or third-party) with certain minimum credentials or certifications? If so, what minimum credentials or certifications should the Agency require?

e. How should owners/operators of RMP-regulated facilities address the findings of the third-party auditor? Should EPA amend the RMP rule to require owners/operators to document how they addressed each of the findings of the third-party auditor? Should a timeframe for addressing those findings be included in the RMP regulation? Should EPA include a procedure for how an owner/operator may appeal the findings of the third-party auditor?

f. Should EPA require facilities that have incidents or near misses to conduct a full compliance audit under § 68.58 or § 68.79, as appropriate? Would such a requirement create a perverse incentive to underreport incidents or near misses?

g. During compliance inspections at multiple-process sources, EPA inspectors have noted that some owners or operators have audited only a subset of covered processes at the source. Should EPA clarify § 68.58 and § 68.79 to explicitly indicate that all covered processes must receive a full compliance audit at least every three years?

h. Does the identity of the auditor (e.g., in-house, contractor, professionally-certified, party licensed by EPA) affect the credibility of the audit for potentially impacted communities?

7. Effects of OSHA PSM Coverage on RMP Applicability

RMP Program 2 applies to processes not eligible for Program 1 or subject to Program 3, whereas Program 3 applies to processes not eligible for Program 1 and either subject to OSHA's PSM standard under federal or state OSHA programs or classified in one of ten specified NAICS codes (see section II.B.10 for a listing of Program 3 NAICS codes). A review of the current RMP national database indicates that approximately 5,360 RMP facilities have reported Program 2 processes within their RMP (in most cases, these facilities have reported a single covered process). Approximately 4,000 (75 percent) of these are bulk agricultural chemical distributors such as West Fertilizer. These facilities generally store large quantities of anhydrous ammonia, as well as other agricultural chemicals, for distribution or sale. Although the presence of anhydrous ammonia above an RMP TQ in a process would normally make that process subject to both Program 3 requirements (assuming it did not qualify for Program 1 by virtue of its remote location and lack of accident history) as well as OSHA PSM, these facilities generally claim that they are exempt from the OSHA PSM standard, and therefore eligible for RMP Program 2, based on the OSHA ''retail facility'' exemption in 29 CFR 1910.119(a)(2)(i).

In its RFI, OSHA has requested information on whether that Agency should change its enforcement policy for retail facilities. OSHA notes that its current application of the PSM exemption for retail facilities is inconsistent with the normal meaning of ''retail'' and the explanation of the purpose of the exemption provided in the preamble to the PSM standard. The OSHA RFI states: ''As stated in the preamble, OSHA chose to exclude retail facilities from PSM coverage because the limited container, package, or allotment sizes of the chemicals typically found at these facilities do not present the same safety hazards as those encountered at establishments working with large, bulk quantities of materials. . . . As a result of increased workplace hazards associated with large, bulk quantities of highly hazardous chemicals, OSHA believes that only retail-trade facilities listed in NAICS sectors 44 and 45 that sell highly hazardous chemicals in small containers, packages, or allotments to the general public qualify for the retail-facilities exemption in 29 CFR 1910.119(a)(2)(i).''

If OSHA were to change its policy such that only facilities selling small containers, packages, or allotments to the general public would qualify for the retail facilities exemption, EPA believes that virtually every bulk agricultural chemical distribution facility process currently claiming Program 2 eligibility under the RMP regulation would henceforth be subject to Program 3 (unless the process were to meet Program 1 eligibility criteria).

Of the remaining (i.e., non-agricultural) Program 2 processes, over 70 percent are water or wastewater treatment facilities located in states without federally-delegated, state-run occupational safety and health programs. These facilities are generally not subject to PSM requirements because they are operated by state or municipal government employees, who are not subject to federal OSHA standards in states without delegated OSHA programs, (i.e., federal OSHA only regulates private employers). It is a peculiarity of the RMP regulation that two identical RMP-covered water or wastewater treatment plants—one located in a state with a state OSHA program and the other in a state without a state-delegated OSHA program—are subject to different levels of accident prevention requirements under the RMP rule. Non-PSM-covered water and wastewater treatment facilities are not classified as Program 3, by definition. Water and wastewater treatment facilities are covered under the RMP regulation due to the presence of large quantities of highly toxic substances, such as chlorine and sulfur dioxide. Processes in private industry sectors involving similar quantities of these chemicals are virtually always subject to Program 3 as a result of their risk to nearby receptors. EPA is interested in receiving public comment on whether RMP-covered municipal water and wastewater plants that are not eligible for Program 1 should also be subject to RMP Program 3, regardless of whether or not they are located in a state with a federally-delegated OSHA program.

Other than bulk agricultural chemical distributors and water and wastewater treatment facilities, there are fewer than 400 RMP facilities currently reporting Program 2 processes to EPA. Of these, EPA believes that approximately half are either non-agricultural bulk chemical distributors that would also become Program 3 in the event that OSHA were to restrict eligibility for its PSM retail exemption, or processes that incorrectly reported as Program 2 in their RMP (i.e., processes that are actually already subject to Program 3). In summary, if OSHA were to restrict eligibility for its retail exemption to facilities selling small containers, packages, or allotments to the general public, and EPA were to require all RMP-covered water and wastewater treatment plants not eligible for Program 1 to comply with Program 3, EPA believes that there would be approximately 200 RMP-covered processes nationwide that would remain eligible for Program 2. In light of these facts, EPA invites comment on whether it should modify Program 2 eligibility criteria, or alternatively, eliminate Program 2 and require all formerly Program 2 processes to comply with Program 3 or Program 1 requirements.[37]

[37] This would mean that formerly Program 2 processes would henceforth be subject to the 5 Program 3 management system elements not required under Program 2 (i.e., Management of change, Pre-startup review, Employee participation, Hot work permits, and Contractors), as well as the

Continued

EPA requests information on the following questions:

a. Do you currently operate a facility with Program 2 covered processes? Please indicate what type of Program 2 process your facility operates. Do you implement accident prevention measures that go beyond RMP Program 2 for this process? If so, why? What additional prevention elements do you use? Do you believe Program 2 requirements are necessary for the safe operation of this process? Do you have any Program 2 processes that may be adequately managed under Program 1? Please explain the basis for your views.

b. Do you operate a water or wastewater treatment plant that is subject to the RMP regulation? If so, what level of accident prevention requirements do you believe are warranted for such facilities? If you operate a Program 2 process at a water or wastewater treatment plant, how much additional burden would be involved in implementing the additional RMP elements required for Program 3 processes?

c. Should RMP-covered municipal water and wastewater plants that are not eligible for Program 1 always be subject to RMP Program 3, regardless of whether or not they are located in a state with a Federally-delegated OSHA program? Why or why not?

d. If OSHA restricts its retail exemption to facilities selling regulated substances in small containers, should EPA eliminate RMP Program level 2 entirely or alternatively, modify Program 2 prevention elements or otherwise change the eligibility criteria for Program 2? If so, why?

e. Would eliminating Program level 2 simplify rule compliance for the regulated universe and improve human and environmental health and safety, or does the current three-tiered prevention program framework under the RMP provide an appropriate level of protection?

f. What would be the economic impacts of modifying or eliminating Program level 2? Are there any special circumstances involving small entities that EPA should consider with respect to modifying or eliminating Program 2?

D. Additional Items for Which EPA Requests Information

This section discusses items that were not previously raised in the OSHA RFI. Each item discussion is followed by specific questions to collect data, information, and comments on each issue.

1. Safer Technology and Alternatives Analysis

EPA has recognized the importance of considering safer technology and alternatives techniques [38] that may result in improved process safety. EPA's existing guidance [39] on the ''general duty clause'' in CAA section 112(r)(1) states that, ''The owners and operators should try to substitute less hazardous substances for extremely hazardous substances or minimize inventories when possible. This is usually the most effective way to prevent accidents and should be the priority of a prevention program.'' EPA encourages sources to continue to examine and adopt viable alternative processing technologies, system safeguards, or process modifications to make new and existing processes and operations inherently safer.'' [40] Additionally, the structure of the applicability provisions of the RMP rule, with TQs, encourages minimizing the presence of regulated substances in processes. Thus, EPA's historic approach to safer technology and alternatives under CAA section 112(r) has encouraged many chemical plant operators to introduce safer technology and alternatives to help reduce the overall risk of their facilities but has not mandated their use or analysis. As we noted in the preamble to the 1996 final RMP rule, ''Application of good PHA techniques often reveals opportunities for continuous improvement of existing processes and operations without a separate analysis of alternatives'' (61 FR 31674, June 20, 1996). In addition, in CAA Section 112(r) enforcement cases, facilities have occasionally entered into consent agreements involving implementation of safer alternatives. As a result of the Executive Order 13650 Report for the President,[41] EPA and other agencies will be considering various additional actions related to safer technologies and alternatives.

In July of 2012, a coalition representing 54 organizations and individuals petitioned EPA to use its rulemaking authority under CAA section 112(r)(7)(A), ''to require the use of inherently safer technologies, where feasible, by facilities that use or store hazardous chemicals.'' The petitioners also requested that ''pending completion of a rulemaking under section CAA 112(r)(7)(A), EPA revise its guidance concerning the enforcement of the Clean Air Act's general duty clause, section 112(r)(1), 42 U.S.C. 7412(r)(1), to make clear that the duty to prevent releases of extremely hazardous substances includes the use, where feasible, of safer technologies to minimize the presence and possible release of hazardous chemicals.''[42] While EPA shares the petitioner's goal of preventing hazardous chemical releases and minimizing their risk to communities, the Agency requests additional information on possible approaches to promoting risk reduction through safer technology and alternatives.

A July 2010 Department of Homeland Security (DHS) report prepared by CCPS [43] described inherently safer technology (IST) as a philosophy and an iterative process, including eliminating a hazard, reducing a hazard, substituting a less hazardous material, using less hazardous process conditions, and designing a process to reduce the potential for, or consequences of, human error, equipment failure, or intentional harm. It stated that there is no clear boundary between IST and other strategies, that ISTs are relative and can only be described as inherently safer when compared to a different technology, including a description of the hazard or set of hazards being considered, their location, and the potentially affected population. Because an option may be inherently safer with regard to some hazards and inherently less safe with regard to others, the decision process must consider the entire life cycle, the full spectrum of hazards and risks, and the potential for transfer of risk from one impacted population to another. This report also noted that there is currently no consensus on either a quantification method for IST or a scientific assessment method for evaluation of IST options.

The CCPS has also published a guideline book [44] intended to provide

more rigorous versions of the 7 Program 3 elements for which there are Program 2 analogs (e.g., Mechanical integrity under Program 3 vs Maintenance under Program 2).

[38] In this document, ''safer technology and alternatives'' refer to risk reduction strategies developed through an analysis using a hierarchy of controls.

[39] *http://www.epa.gov/emergencies/docs/chem/gdcregionalguidance.pdf.*

[40] See 61 FR 31700.

[41] Chemical Facility Safety and Security Working Group, Executive Order 13650 Report to the President—Actions to Improve Chemical Facility Safety and Security—A Shared Commitment, May 2014; *https://www.osha.gov/chemicalexecutiveorder/final_chemical_eo_status_report.pdf.*

[42] *https://www.documentcloud.org/documents/404584-petition-to-epa-to-prevent-chem-disasters-filed.html, at 10.*

[43] CCPS Final Report: Definition for Inherently Safer Technology in Production, Transportation, Storage, and Use, July 2010.

[44] American Institute of Chemical Engineers, Center for Chemical Process Safety, Inherently Safer Chemical Processes: A Life Cycle Approach, Second Edition, New York, Wiley, 2009.

tools and guidance on approaches to implementing inherent safety. Among other information, the book contains an extensive checklist intended to assist industrial facilities with reviewing existing hazards and their safeguards, evaluating the feasibility of inherently safer alternatives, and documenting the results of this analysis.

A 2012 National Academy of Sciences report [45] found that while inherently safer process assessments can be valuable components of process safety management, inherently safer process assessments will not always result in a clear, well-defined, and feasible path forward. Although one process alternative may be inherently safer with respect to one hazard—toxicity of byproducts, for example—the process may present other hazards, such as an increased risk of fire or more severe environmental impacts. Choosing between options for process design involves considering a series of tradeoffs and developing appropriate combinations of inherent, passive, active, and procedural safety systems to manage all hazards.

There are some state and local governments that have included inherent safety requirements in their regulations. An IST Review Rule was adopted under the New Jersey TCPA program in May 2008. It requires IST reviews of all facilities covered by the TCPA by evaluating the four IST principles: Minimization, substitution, moderation, and simplification. The rule includes a checklist developed under the direction of the New Jersey Domestic Security Preparedness Task Force. The New Jersey Department of Environmental Protection recommends three methods for IST analysis: [46] (1) Reviewing and completing a checklist containing a number of practical inherent safety considerations, (2) avoiding a particular hazard at a part of the process by employing a particular inherently safety strategy and (3) integrating IST into the facility's PHA study. A facility must determine an identified alternative's feasibility, and must provide written justification based on both qualitative and quantitative evaluations of environmental, human health and safety, legal, technological, and economic factors if it decides not to implement it. For IST alternatives implemented, an implementation schedule must be provided. A January, 2010 report prepared by the New Jersey Department of Environmental Protection to summarize the Department's review of 85 IST reports indicated that approximately 48% of facilities reported that they had implemented or scheduled to implement IST measures as a result of conducting the IST review.[47]

California's Contra Costa County's Industrial Safety Ordinance [48] requires stationary sources to consider IST in the development and analysis of mitigation systems resulting from a process hazard analysis for each covered process, and in the design and review of new processes and facilities. The stationary source must select and implement inherently safer systems to the greatest extent feasible, documenting in detail a determination that an inherently safer system is not feasible. A February, 2013 report prepared by Contra Costa County Health Services indicated that 4 of 7 facilities covered under the ordinance's IST provision implemented at least one inherently safer measure within the previous year.[49]

The CSB has released reports for two recent accidents that the Board indicated could have been avoided if safer technologies had been employed. CSB found that the use of a safer material, such as high-chromium steel, would have prevented the accelerated corrosion and failure of carbon steel involved in the equipment rupture at the Tesoro Refinery in Anacortes, Washington in 2010, which resulted in an explosion and fire that killed seven employees.[50] CSB also cited the failure to use more corrosion resistant high-chromium steel as a factor in the 2012 Chevron Refinery accident in Richmond, CA which released hydrocarbons that ignited, endangering 19 employees.[51]

An additional complication to assessing safer technologies and alternatives is the varying amount and quality of information available regarding their implementation by industry. While some facilities have converted to processes considered to be inherently safer, other facilities may not have sufficient information available to effectively assess the impacts from changing existing processes to ones considered inherently safer. The differences that exist among chemical facilities, in terms of chemical process, facility layout, and ability to finance implementation, may challenge mandatory implementation of safer technologies and alternatives at regulated entities.

EPA is planning the following steps to advance safer technologies and alternatives:

- Publishing a joint alert with OSHA illustrating the concepts, principles and examples of safer technology and alternatives to make industry more aware of this information, while providing sources of information for further investigation and review,
- Publishing a voluntary guidance document with OSHA for operators on how to reduce risks by employing safer technology and alternatives, by offering a more thorough examination of alternative measures and safety techniques, including examples of safer technology and alternatives or practices,
- Based on the evaluation of feedback from the alert, guidance, and this RFI, EPA would consider proposing an amendment to the RMP regulations that requires:
  - An analysis and documentation of safer technologies and alternatives
  - Integration of the safer technologies and alternatives analysis into the PHA
  - Implementation of safer technologies and alternatives where feasible; EPA would not make any determination regarding the specific analysis, technology, design, or process selection by chemical facility owners or operators.

EPA requests information on the following questions:

a. Should EPA require a safer alternatives options analysis either as a new prevention program element, as part of the existing PHA/Hazard Review element, or as a separate new requirement under CAA section 112(r)?

b. How should safer alternatives be defined if it were to be a requirement under CAA section 112(r) regulations? What specifically should a safer alternatives analysis require and how would this differ from what is already required under other provisions of the RMP?

c. How should industries determine if a safer alternative exists for their particular process? What safer alternative chemicals are available for the listed RMP chemicals and for ammonium nitrate?

d. What should facilities consider when determining if such technologies, when identified, are effective, available, and economically justified for their particular process or facility? Can the RMP national database, Lessons Learned

[45] *http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/MIC-Summary-Final.pdf*

[46] See: *http://www.nj.gov/dep/rpp/brp/tcpa/downloads/IST_guidance.pdf; http://www.njwec.org/PDF/Factsheets/CS_IST_FactSheet.pdf.*

[47] See: *http://www.nj.gov/dep/rpp/brp/tcpa/downloads/IST_SUMWEB.pdf.*

[48] See: *http://cchealth.org/hazmat/pdf/iso/2006_iso_official_code_complete.pdf.*

[49] See: *http://cchealth.org/hazmat/pdf/iso/iso-report.pdf.*

[50] See: *http://www.csb.gov/assets/1/7/Tesoro_Anacortes_2014-May-01.pdf.*

[51] See: *http://www.csb.gov/assets/1/19/Chevron_Interim_Report_Final_2013-04-17.pdf.*

Information System [52] or other federal databases be structured to promote the exchange of information both within industry and with other stakeholders on potentially safer technologies?

e. If EPA were to require facilities to undertake an evaluation of the potential to incorporate safer alternatives, what minimum criteria should this evaluation be required to meet? How would the evaluation determine if a particular alternative is feasible, cost effective and results in less risk? What requirements or incentives, if any, should there be for implementation of identified safer alternatives? How should any such requirements be structured and enforced?

f. Should EPA require facilities to use a safer alternatives evaluation method such as the CCPS Inherently Safer Technology Checklist? [53]

g. How should EPA and facilities address the risk tradeoffs that could result when changing a process to incorporate safer alternatives?

h. Should EPA consider requirements similar to those used by the State of New Jersey or Contra Costa County, California, and if so, why? What have been the benefits of such programs in risk reduction or process safety for the facilities covered under these requirements? What have been the limitations or drawbacks of these programs?

i. If EPA were to develop regulatory requirements for safer alternatives, which facilities should be subject to those requirements? Should all RMP facilities be subject to such requirements, or only ''high risk'' facilities, such as refineries and large chemical plants? How would ''high risk'' be defined? Are there particular processes or chemicals that should be targeted or prioritized for implementation of such requirements?

j. What barriers exist for industry to adopt safer alternatives? What incentives can be used by government to have facilities implement safer alternatives? Should the Agency provide special recognition to companies that implement safer alternatives?

k. What are other options (other than regulatory requirements) exist to encourage facilities to investigate, develop or implement safer alternatives and how can EPA further these efforts?

l. If RMP facilities are required to perform safer alternative options analyses and implementation plans, should EPA require that the analyses and/or implementation plans be submitted to the Agency? Should EPA have any role in approving such analyses or plans? In lieu of an approval, can EPA promote safer alternatives through reporting and the dissemination of information on potentially applicable practices?

m. If RMP facilities are required to consider safer alternative options, what role should local communities have in these analyses? Should facilities be required to disclose these analyses or recommendations resulting from such analyses to local authorities or the public prior to the selection of options? Are there any other disclosure options that will ensure that decisions on implementing safer technologies are made with transparency? Are there any means of oversight other than disclosure that would ensure that safer alternatives analyses are thorough and implementation decisions are appropriate?

n. What would be the economic impacts of requiring facilities to analyze safer alternative options? Are there any special circumstances involving small entities that EPA should consider?

2. Emergency Drills To Test a Source's Emergency Response Program or Plan

Under Subpart E of 40 CFR part 68, RMP-covered facilities are required to coordinate emergency response actions with local emergency planning and response agencies. RMP facilities with Program 2 and Program 3 processes must also develop and implement an emergency response program in accordance with § 68.95 if facility personnel will respond to accidental releases. As part of the emergency response program, an emergency response plan must be maintained at the stationary source; the program must include procedures for the use of emergency response equipment and for its inspection, testing, and maintenance; training for all employees in relevant procedures; and procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes. For those Program 2 and Program 3 facilities at which facility employees will not respond to accidental releases, coordination with community emergency planners and responders is required and an appropriate mechanism must be in place to notify responders when there is a need for a response.

Exercising response plans is critical to ensure that response personnel understand their roles, local emergency responders are familiar with the hazards at the facility, and that the emergency response plan is appropriate and up to date. It ensures that personnel are properly trained and can be used to identify future training needs. Other EPA and Federal agency programs require exercises and drills as an element of their emergency response programs. For example, under the Oil Pollution Prevention regulation (40 CFR part 112), Facility Response Plan (FRP) holders are required to conduct drills and exercises, including evaluation procedures (§ 112.21). Exercises at FRP facilities may follow the National Preparedness for Response Exercise Program (PREP) Guidelines [54] which were developed to provide a mechanism for compliance with EPA, U.S. Coast Guard (USCG), and U.S. Department of the Interior (DOI) exercise requirements for oil pollution response. The PREP guidelines include both internal and external exercise components. Internal exercises include notification exercises, emergency procedures exercises, spill management team tabletop exercises, and equipment deployment exercises. External exercises include area exercises, that include members of the response community, and government-initiated unannounced exercises.

Another example are exercises that the U.S. Nuclear Regulatory Commission (NRC), in conjunction with the Federal Emergency Management Agency (FEMA) and State and local government perform at nuclear power plants. The exercises evaluate both on-site and off-site emergency preparedness capabilities. The NRC also requires Research and Test Reactor (RTR) emergency plans to address the necessary provisions for coping with radiological emergencies at each facility in accordance with 10 CFR 50.54(q) and Appendix E to 10 CFR 50. Operators of RTRs are required to train personnel and perform emergency preparedness exercises in order to ensure the feasibility of the emergency preparedness plan.

Finally, industry guidelines recommend conducting exercises and drills. The CCPS Guidelines for Risk Based Process Safety [55] recommend periodically testing the adequacy of emergency response plans and level of

[52] *https://www.llis.dhs.gov/topics/chemical-facility-safety-and-security.*

[53] CCPS, Inherently Safer Chemical Processes: A Life Cycle Approach, Second Edition (2009), Appendix A.

[54] A copy of the National Preparedness for Response Exercise Program (PREP) Guidelines, August 2002, can be accessed on the USCG Web site at *http://www.uscg.mil/vrp/faq/oil.shtml* under ''Additional References.''

[55] Center for Chemical Process Safety, *Guidelines for Risk Based Process Safety,* American Institute of Chemical Engineers, New York, New York, 2007.

preparedness of responders, including contractors and local response agencies.

In order to improve coordination with community responders and ensure that facility personnel have practice responding to accidental releases, EPA is considering requiring RMP-regulated facilities to perform exercises or drills as an element of the emergency response program identified under Subpart E of the RMP regulation.

In considering this issue, EPA requests information on the following questions:

a. Are RMP-regulated facilities currently exercising their emergency response plans? If so, are they doing these exercises to comply with other federal, state or local regulatory requirements? What references or guidelines were used to develop the exercise program?

b. What should be the scope of an exercise/drill program? Should the exercise/drill program include internal (emergency response, notifications, and evacuation) and external elements (involving community and federal and state responders, as appropriate)? What elements should be exercised as part of the drill/exercise program? For example, should the program include communications, coordination, logistics, and evacuations/accounting for personnel, etc? What response scenarios should be considered for the exercise/drill program?

c. How frequently should drills/exercises be performed?

d. Who should be involved in the exercise program? How should the management team be engaged as part of the drills/exercises? How should contractors be included in the exercise/drill planning and when conducting exercises/drills? Who should be the designated official responsible for coordinating the exercises and drills conducted at the RMP facility? How should other federal, state and local agencies be included in the exercise/drill program?

e. Should all RMP facilities be required to participate in some type of exercise/drill program or only those who are required to develop an emergency response program? Should Program 1 facilities (and Program 2/Program 3 facilities that do not respond to accidental releases with their own employees) be required to conduct external exercises with community responders and test notification procedures? Should Program 2 and Program 3 facilities whose employees respond to accidental releases conduct both internal and external exercises?

f. How should lessons learned and recommendations be documented and addressed? What timeframe should be considered for completing such records? How long should records of exercises/drills be maintained?

g. Should stationary source operators be required to document and address lessons learned and recommendations when they respond to an actual accidental release?

h. Should information such as the date of the most recent exercise involving the emergency response plan be required to be reported to EPA in the facility's RMP?

i. What would be the economic impacts and paperwork burden of requiring an exercise/drill program for all or a subset of RMP facilities? Would such a requirement substantially improve preparedness for dealing with emergency situations? Are there any special circumstances involving small entities that EPA should consider with respect to an exercise/drill program?

3. Automated Detection and Monitoring for Releases of Regulated Substances

A process hazards analysis is intended not only to identify existing hazards, but also the likelihood that safety and mitigating systems, including detection and monitoring equipment, would function properly to eliminate or reduce the consequences that may occur as a result of those hazards. The RMP Program 3 Prevention Program requires regulated facilities to conduct a process hazard analysis (§ 68.67). The rule specifically requires a facility's hazard analysis to address engineering and administrative controls applicable to the hazards and their interrelationships, such as appropriate application of detection methodologies to provide early warning of releases. Examples of acceptable detection methods identified in this requirement include process monitoring and control instrumentation with alarms, and detection hardware. Likewise, emergency response procedures can reduce the severity of a release and protect employees, emergency responders, and the public from harmful exposure to the regulated substances. RMP-regulated facilities must have procedures or mechanisms in place for informing the public and local emergency response agencies about accidental releases. These process hazards analysis and emergency program elements, while addressing detection methodologies, early warnings, and incident notifications, include no specific requirements for automated detection and monitoring systems to be installed. The active use of such systems may enhance both the prevention of and the response to accidental releases. However, the Agency understands that the need for and appropriate deployment of such systems is likely to be highly site-specific, and that facilities may already have appropriate incentives to deploy such systems where warranted and cost-effective.

The Agency recognizes that even equipment that is properly designed and maintained can sometimes fail. Automated detection and monitoring systems can be used not only to assess the effectiveness of existing control measures, but also to provide early warning of system upsets which could be acted upon to prevent a more serious or catastrophic incident. Linking these with alert systems and proper communications with the public and first responders may enhance emergency response efforts in the event of an incident, resulting in better protection of human health and the environment. For example, large increases in emissions due to a piping leak, a significant tear in a storage vessel seal, or other similar event can signal a process upset. Systems in place to detect leaks (or the conditions that might result in leaks) in a timely manner would allow for corrective measures to be taken more rapidly than if a facility relied solely on traditional monitoring and inspection methods. RMP inspection and enforcement history has shown this to be of concern, particularly for facilities that are not staffed on a full-time basis and which may also be located in close proximity to population centers or environmentally sensitive areas.

While facilities may identify the benefits of installing automated detection and monitoring systems as they conduct their process hazards analysis, or as they develop their emergency response plan, the decision to invest in such equipment may be influenced by many factors. For example, automated detection and monitoring technologies may not be available for particular chemical hazards, or industry standards may not address their proper use. They may also be costly. Nevertheless, the Agency is requesting information on the need for new or expanded requirements for automated detection and monitoring systems that would supplement either the existing process hazard analysis and/or emergency response requirements. Specifically, EPA requests information on the following questions:

a. Should facilities be required to install monitoring equipment or sensors to detect releases of RMP regulated substances, or the conditions that could lead to such a release? Should the systems provide for continuous

detection and monitoring? How should any such requirements be crafted to provide appropriate site-specific flexibility?

b. Are there specific issues that need to be considered for unmanned and/or remote facilities?

c. Should an automated mechanism to notify, alert and warn the local responders and surrounding public of an incident be considered as part of any detection and monitoring system requirement? If so, how should the potential for false alarms be addressed within such a requirement?

d. How can a requirement for automated detection and monitoring systems be best coordinated with the community emergency response plan? What are the advantages/disadvantages between continuous monitoring conducted by automated systems in contrast to third-party alarm agencies?

e. How would a requirement for appropriate detection thresholds be best established for activating alarms and/or alerts?

f. How would the significance and appropriate protective response action of the alarms/alerts be best communicated to responders and the public (including shelter-in-place and evacuations)?

g. What involvement should LEPCs and SERCs have in the development of the emergency response plan, particularly with respect to what actions are to be taken in the event of an incident where and alarm/alert is activated?

h. How frequently should monitoring equipment or sensors to detect releases of RMP-regulated substances be tested? How should these tests be documented? How long should records of such tests be maintained? Should automated monitoring records for periods of normal operations be maintained, so that past records may serve as an aid in determining what may have gone wrong prior to an accident (e.g., a gradual increase in emissions)? Should EPA specify requirements in this area, or are these aspects of program implementation best left to the facility?

i. Leak detection and repair programs are common under the CAA's routine emission programs. Can these programs be integrated with the accidental release prevention program to reduce accidental releases and to simplify requirements for stationary sources subject to both the RMP and these other programs? Are there jurisdictional issues that prevent integration?

j. What would be the economic impacts of specifying additional monitoring and detection requirements in the RMP? Are there any special circumstances involving small entities that EPA should consider with respect to such monitoring and detection requirements?

4. Additional Stationary Source Location Requirements

EPA is considering whether to amend 40 CFR part 68 to provide more specific requirements to address stationary source siting. In 2005, a series of explosions occurred at the BP Texas City refinery during the restarting of a hydrocarbon isomerization unit. Fifteen workers were killed and 180 others were injured. Many of the victims were in or around work trailers located near an atmospheric vent stack. The CSB investigation identified the siting of the trailers as a key factor that led to the fatalities. The PSM standard and RMP rule both require that facility siting be addressed as one element of a PHA (see 29 CFR 1910.11 9(e)(2) and (3)(v)), and 40 CFR 68.67(c)). While EPA has not provided any guidance on how to adequately address stationary source siting in the PHA. RMP facility owner/operators can refer to industry guidance on siting considerations. The following publications provide guidance on facility siting:

- American Petroleum Institute (API) Recommended Practice 752, Management of Hazards Associated With Location of Process Plant Buildings, 3rd Edition, December 2009;
- API Recommended Practice 753, Management of Hazards Associated with Location of Process Plant Portable Buildings, First Edition, June 2007
- CCPS, Guidelines for Facility Siting and Layout (2003); and
- CCPS, Guidelines for Evaluating Process Plant Buildings for External Explosions and Fires, and Toxic Releases, 2nd Edition (2012).

Both the siting of processes within a stationary source and the siting of the stationary source itself can affect the impact of an accidental release. Siting within a stationary source can impact the surrounding community not only by the proximity of the accidental release to off-site receptors adjacent to the facility boundary (e.g., people, infrastructure, environmental resources) but also by increasing the likelihood of a secondary ''knock-on'' release through compromising nearby processes.

Siting of a stationary source itself may allow the potential impact of an accidental release to dissipate depending on the distance from the source to receptors. The lack of sufficient distance between the source boundary and neighboring residential areas was a significant factor in the severity of several major chemical accidents, including, among others, the Bhopal disaster and the recent West Fertilizer accident. Facility designers have long recognized the potential benefits of adding buffer or safety zones—controlled areas separating the public and other facilities from the consequences of process incidents—when selecting the location for new chemical facilities (see, e.g., CCPS (2003)). For existing facilities, owners have sometimes compensated nearby residents to relocate away from the facility boundary in order to create a buffer zone where one did not previously exist, or where adjacent residential areas had been developed after the facility itself was constructed.[56]

Should EPA amend the RMP rule to include more specific siting requirements as part of the PHA by, for example, establishing buffer or setback zone requirements for new covered stationary sources, or by establishing safety criteria for siting of occupancies inside the facility? Would such requirements provide significant incremental protection over current industry practice based on the references cited above? In considering this issue, EPA requests information on the following questions:

a. Would additional specifics on stationary source siting and occupancy siting under the RMP minimize the impacts of chemical accidents to local communities? How should RMP stationary source siting requirements relate to OSHA PSM and other industry standards?

b. What guidance should EPA consider in the development of stationary source siting requirements?

c. What information should EPA consider in the development of stationary source buffer or setback zones for different risks? How should EPA address siting when limited space is available?

d. What administrative processes and controls should be incorporated into stationary source siting requirements?

e. What safety and process devices, instruments and controls should be incorporated into stationary source siting requirements?

f. What criteria are appropriate for siting of occupancies (such as offices, control rooms, cafeterias, etc.) near an RMP-regulated process?

[56] See Matthews, Joe. ''Paying neighbors to move Mossville: Residents of this Louisiana town, like those in Wagner's Point here, faced a showdown with Condea Vista. Their experience is instructive.'' *The Baltimore Sun* 6 Dec. 1998, and Gallagher, John. ''Marathon offers to buy out Detroit homeowners near refinery amid $2.2B expansion.'' *The Detroit Free Press* 2 Nov 2011.

g. How often should stationary source siting be evaluated for effectiveness? What criteria should be used?

h. What documentation should be required for evaluating stationary source siting determinations?

i. Is it appropriate to reflect the environmental burden of the surrounding community in siting criteria for either new facilities or expansions within an existing site? Is it appropriate to consider chronic burdens or only burdens associated with accidental releases?

j. What challenges would the agency face in specifying uniform siting requirements for the wide variety of covered sites? What site specific factors would need to be addressed?

k. If EPA mandated siting criteria, how should EPA account for local zoning codes when establishing such criteria? Would setting federal requirements overstep into the normal state and local zoning process, or would it act as a supplemental measure ensuring minimal safety standards across the country?

l. What would be the economic impacts of specifying additional siting requirements? Are there any special circumstances involving small entities that EPA should consider with respect to siting requirements?

5. Compliance With Emergency Response Program Requirements in Coordination With Local Responders

Subpart E of the RMP regulation offers owners and operators of RMP-covered facilities with Program 2 or 3 processes two emergency response options. For facilities whose employees will respond to accidental releases of regulated substances, section 68.95 of the regulation requires owners or operators to implement an emergency response program that includes an emergency response plan, procedures for the use of emergency response equipment, training for employees, procedures to review and update the response plan, and other elements. These ''responding'' facilities are also required to coordinate their emergency plan with local response authorities.

For facilities whose employees will not respond to releases, the RMP regulation states that owners and operators of these sources need not comply with the provisions of section 68.95 provided that the source is included in the community emergency response plan (for sources with regulated toxic substances) or has coordinated response actions with the local fire department (for sources with only regulated flammable substances), and that appropriate notification mechanisms are in place to notify emergency responders when there is a need for a response.

Subpart E can be read as offering owners or operators the choice of whether to be a responding or non-responding facility. RMP-regulated facilities indicate within their risk management plan whether or not they are a ''responding'' facility (i.e., by indicating compliance with mandatory elements of emergency response plans required in section 68.95(a)(1)), and EPA has found that the majority of RMP facilities claim to be ''non-responding'' facilities. However, during facility inspections, EPA has often found that facilities are either not included in the community emergency plan or have not properly coordinated response actions with local authorities. This problem occurs with both responding and non-responding facilities, but it is particularly troublesome for non-responding facilities, because if the facility itself does not maintain the capability to respond to emergencies, and local authorities are not able to respond, then a proper response to an accidental release at the facility may not occur or may be significantly delayed. EPA requests comment on whether this problem could be addressed through better enforcement of existing requirements, and if so, how best to do this.

In some cases, accidental releases have been made significantly worse due to poor emergency response planning and coordination. For example, following the August 2008 explosion and fire at the Bayer CropScience facility in Institute, West Virginia, poor coordination between the facility incident commander and local authorities prevented important information, including a shelter-in-place order, from being timely communicated to local authorities. Additionally, facility authorities initially prevented local responders from gaining access to the site of the incident.

EPA is considering whether the Emergency Response provisions in Subpart E of the RMP regulation should be revised to state more explicitly that owners and operators of RMP-regulated facilities must comply with the emergency response program requirements of section 68.95 unless local public responders both have the means and agree to respond to releases of regulated substances at the facility, and to describe what facility owners or operators must do to coordinate with local authorities on the development of community emergency response plans.

EPA requests information on the following questions:

a. Do you own or operate an RMP-regulated facility that relies on public authorities to respond to accidental releases of regulated substances at the facility? What steps do you take to ensure that public responders are prepared to properly respond to accidental releases at your facility? Should EPA clarify what steps RMP facilities should take in order to properly coordinate their emergency response plan with the community emergency response plan?

b. If your facility uses its own employees or response contractors provided by the facility to respond to emergencies, what factors led to your decision to use your own employees or contractors to conduct emergency response operations? What steps have you taken to coordinate with local responders on emergency response planning?

c. Are you a member of an LEPC, municipal fire department or municipal hazardous materials response team? If so, do you believe that ''non-responding'' RMP facilities in your jurisdiction have generally provided the appropriate information and support to your organization to ensure an appropriate response to hazardous substance emergencies at those facilities? Is your organization capable of responding appropriately to such events at RMP facilities? How often do you visit RMP facilities in your jurisdiction? Do you conduct emergency drills at RMP facilities? Do you believe that RMP facilities should generally respond to emergencies using their own employees, or rely on public responders? Should EPA clarify what is necessary for RMP facilities to adequately coordinate their emergency response plan with the community emergency response plan? Would new regulations in this area significantly improve emergency response planning in your area?

d. Are there certain substances or types of facilities that present particular response challenges for local authorities? If so, which substances or types of facilities? Should such facilities be required to prepare and implement comprehensive emergency response programs instead of relying primarily on public responders? Do public responders in your area have adequate existing authority to require this now?

e. If public responders are not capable of responding to a particular type of chemical or release event at an RMP-regulated facility, should the owner or operator of the facility be required to provide for an effective response, either with the facility's own employees, response contractors, a mutual aid

agreement with nearby facilities, or some other means?

f. What would be the economic impacts of expanding the emergency response requirements as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to modifying emergency response requirements?

6. Incident Investigation and Accident History Requirements

Incident investigations and accident history reporting can provide valuable information about potential hazards and the steps needed to prevent future events. Many times, the cause of an incident is the result of a series of other problems that need to be addressed to prevent recurrences. For example, an operator's mistake may be the result of poor training, inappropriate procedures, or poor design of control systems; equipment failure may result from improper maintenance, misuse of equipment (e.g., operating at too high a temperature), or use of incompatible materials. Through incident investigation a facility owner or operator would determine not only the initiating event that led to the release, but more importantly its root cause(s). Accident history reporting provides an avenue to disseminate that information. Thorough investigations and reporting may help facilities identify and address root causes.

The RMP's incident investigation requirements closely track those established in OSHA's PSM accident investigation requirements. Likewise, EPA's hazard assessment requirements include a five-year accidental release history, which has some overlap with similar OSHA process hazard analysis requirements. While most catastrophic releases affect workers first, there are incidents where workers are protected but the public and the environment may be threatened, e.g. emergency relief devices working as designed to vent hazardous atmospheres away from the workplace and into the air where they may be carried downwind. Although the PHA process may have recognized and addressed the potential off-site impact associated with safety measures that protect workers (e.g. an emergency vent scrubber system), the RMP requires that facilities consider such possibilities and integrate the protection of workers, the public, and the environment into one program. Thus, RMP facilities must investigate each significant incident which resulted in, or could reasonably have resulted in a catastrophic release. A catastrophic release is defined for purposes of the RMP as one where a major uncontrolled emission, fire, or explosion, involving one or more regulated substances presents an imminent and substantial endangerment to public health and the environment. Imminent and substantial endangerment includes off-site consequences such as death, injury, or adverse effects to human health or the environment, or the need for the public to shelter-in-place or be evacuated to avoid such consequences. In contrast, the accident history requirement includes a five-year record of only those accidents from covered processes that resulted in deaths, injuries, or significant property damage on-site, or known off-site deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. Near-miss accidents or accidents with only the potential for consequences are not required to be included, and the accident history requirement applies only to covered processes.

EPA has encouraged facilities to investigate all accidental releases. However, the focus of the current incident investigation and accident history reporting requirements is limited. EPA's experiences with RMP facility inspections and incident investigations show there have been incidents that were not investigated, even though under slightly different circumstances, the incident could have resulted in a catastrophic release. While these unplanned ''near miss'' events did not result in deaths, injuries, adverse health or environmental effects, or sheltering-in-place, only a fortunate break in the chain of events prevented a catastrophic release of a regulated substance from happening. For example, a runaway reaction that is brought under control by operators is a near miss that may need to be investigated to determine why the problem occurred, even if it does not directly involve a covered process. Similarly, fires and explosions near or within a covered process, any unanticipated release of a regulated substance, and process upsets that could have led to a release of a regulated substance may also be one step away from initiating a chain of events leading to a catastrophic release. Additionally, there have been some cases where the facility chose not to conduct an investigation because the owner/operator elected to decommission the process involved, or because the process was destroyed in the incident. While an investigation would have no impact on a decommissioned or destroyed process, other similar processes or operations at the facility, or at similar facilities, could potentially benefit from its findings. In other instances, facilities have failed to investigate serious releases because they determined there were no actual or potential off-site consequences. Investigating these types of incidents and including them as part of the RMP accident history report could provide facilities with important information on what problems could lead to an incident, and allow for the facility to address them before a catastrophic release occurs. Further, including some of these incidents as part of the accident history could also improve process safety at facilities with similar processes, where operators could learn from the shared information.

Incident investigations may result in improved process safety through the dissemination of lessons learned and the implementation of recommended corrective actions. Conducting these investigations as soon as possible after an incident may yield better quality data and information, though time may also be required to collect, validate, and integrate data from a range of sources. EPA has discovered situations where incident investigations by regulated facilities have been indefinitely delayed. Delays could result in an increased risk of incident recurrence as root causes and the appropriate corrective actions are not necessarily promptly identified or implemented. The value of conducting incident investigations and communicating lessons learned in a timely manner was also recognized by the CSB. In recommendations to the Agency, the CSB called for RMP accident histories to be updated on a more timely basis in view of the valuable information they provide for chemical accident prevention and preparedness efforts by government, industry and the public.[57] EPA agreed with the CSB recommendation and amended the RMP accident history requirements to require that facilities who have had an accident meeting the criteria for the five-year accident history to update their RMP accident history to include the new accident history information within six months of the date of the accident.

The Agency is considering whether broadening the incident investigation and accident history requirements to include clear requirements to investigate near misses and determine root causes of accidents, near misses, and process upsets would promote

[57] Joint Chemical Safety Board, Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, and EPA Roundtable on Developing Improved Metrics on Accidental Chemical Process Releases, November 14, 2002.

increased safety. The Agency is requesting information on the appropriateness of requiring root cause investigations of incidents, process upsets and near-misses, and of establishing specific time frames for incident investigations to be completed. Specifically, the Agency requests detailed information on the following questions:

a. Are the RMP incident investigation requirements too narrowly focused? Would identifying a broader range of incidents requiring investigation (e.g., near misses) help prevent additional accidental releases? Please provide specific examples where possible. EPA requests information on alternative definitions or incident classifications that could be included within the rule's incident investigation requirements.

b. Are there any data or information on process upsets, near misses or other incidents that were not required to be investigated, but where an investigation and resulting changes in management systems might prevent accidental releases?

c. Does your facility routinely investigate incidents not required to be investigated under part 68? If so, please describe the types of incidents investigated, and the effects these investigations have had on facility operations.

d. Would a specific time frame for incident investigations to be completed benefit overall safety? What should be the basis for establishing an appropriate timeframe requirement for an incident investigation to be completed? What are the challenges and limitations to completing an incident investigation within a specified timeframe?

e. Are there benefits from requiring that investigations must be performed even in cases where the owner/operator elects to decommission the process involved, where the process is destroyed in the incident, or where a facility determines there were no actual or potential off-site consequences? Would such a requirement provide a disincentive to decommission potentially risky processes?

f. Would a modification of the definition of ''catastrophic release'' assist in addressing the concerns regarding the appropriate scope of incidents that require investigation?

g. Would a modification of the accident history reporting requirements to reflect a broader range of incidents being investigated assist in disseminating lessons learned across industry?

h. Should EPA require facilities that have incidents or near misses to conduct a full compliance audit under § 68.58 and § 68.79?

i. Is it appropriate for facilities to share the results of accident investigations with the local community or alternatively a summary of the accident, and its root cause? Is there an appropriate role for the local community in conducting investigations?

j. What would be the economic impact of broadening the RMP incident investigation requirements to require root cause investigations of near misses? Are there any special circumstances involving small entities that EPA should consider? Would small businesses have the capacity to investigate near miss incidents?

7. Worst Case Release Scenario Quantity Requirements for Processes Involving Numerous Small Vessels Stored Together

Section 68.25(b) of the RMP rule requires the owner or operator to determine a worst-case release quantity. The regulation states that ''the worst case release quantity shall be the greater of the following: (1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or (2) For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.'' Based on a review of past RMP submissions and facility inspections, EPA believes that in most cases the current requirements result in a reasonable estimate of worst case releases. However, for certain categories of facilities, like chemical warehouses, where large numbers of regulated chemical containers are stored closely together, the Agency has questions about whether a different approach would better characterize the potential process hazards and associated risks. This is of particular concern for those cases where each storage container may only contain a few pounds of a regulated substance, but there are numerous such containers stored in close proximity to one another.

This type of situation occurred on June 24, 2005, where a fire involving propylene cylinders occurred at the St. Louis Praxair Distribution site. A small fire that began in one propylene cylinder spread to other nearby propylene cylinders and then to acetylene and propane cylinders. The exploding cylinders flew up to 800 feet in the air, started fires, and damaged property in the community. The fire consumed 8,000 cylinders, or almost the entire inventory of flammable gases at the facility. Similar accidents have occurred at Air Liquide in Phoenix, Arizona in June 1997, Airgas in Tulsa, Oklahoma in August 2003, and Praxair in Fresno, California in July 2005. An October 2006 accident in Apex, North Carolina, involving numerous small containers of flammable and toxic materials stored at a hazardous waste disposal facility caused a fire, multiple explosions, and the release of a toxic vapor cloud that resulted in the evacuation of 16,000 nearby residents.

EPA seeks information on whether to revise section 68.25(b) of the RMP regulation to better account for processes involving numerous small vessels stored together, such as on pallets, cylinder racks, and in groups. EPA is looking for information on whether including the entire quantity in one location or one process, instead of just the single largest vessel or pipe, would better represent the true worst case scenario quantity, and thereby increase protection to human health and the environment and help prevent future accidents from occurring. EPA also requests comment on whether there are ways of grouping vessels or pipes short of including all the vessels or pipes at a facility that would be appropriate for worst case scenario analysis. EPA is also interested in receiving information on whether worst-case scenario requirements should account for the potential cascading effects of separate facilities that are interconnected (e.g., a manufacturer that provides product to an adjacent source through an interconnecting pipeline). Specifically, EPA requests information on the following questions:

a. Should EPA revise § 68.25(b) to require the owner or operator of any regulated process involving numerous small containers stored together to consider as the worst case release quantity the sum of the quantity of all containers in the process, or a subset of such containers, or the containers within one storage area of the process?

b. Would revising the worst case scenario quantity determination requirement in this manner better represent the true worst case scenario for such processes?

c. Would this change promote stronger process safety controls and help prevent accidents?

d. In situations where numerous small containers are stored together, are there any kinds of protective barriers or other methods of storage that would reduce the likelihood of a release from one container causing additional releases from adjacent or nearby containers? Should such barriers or storage methods be incorporated into the rule's worst

case scenario requirements, and if so, how? Would revising § 68.25(b) cause any type of additional burden on facilities where large amounts of chemicals are stored together?

e. If EPA were to revise § 68.25(b) to take into account numerous small vessels being stored together, what types/kinds of vessels should be covered? Should there be any limits on the size of containers subject to the aggregation requirement? What would such limits be based on? Similarly, should there be a specific distance between vessels established in order to consider them as grouped together for purposes of worst case scenario calculations? What would that distance be based on?

f. Should EPA revise § 68.25 to require the owner or operator of a regulated process to consider the potential for worst case release scenarios to involve adjacent facilities or other nearby facilities that are interconnected through pipelines? Would this change raise any confidentiality or security issues? How would EPA adjust its worst case scenario modeling requirements to account for such a change?

g. What would be the economic impacts of modifying the worst case scenario analysis requirements as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to worst case scenario analysis?

8. Public Disclosure of Information To Promote Regulatory Compliance and Improve Community Understanding of Chemical Risks

EPA is seeking public comment on whether there are additional steps the Agency could take to improve compliance through increased information disclosure to the public and local authorities. For example, would requiring RMP-covered facilities to post on a company Web site unrestricted (i.e., non-off-site consequence analysis) RMP information, such as the facility's RMP executive summary, emergency contact information, identity of the LEPC, or links to the local emergency response plan and/or the facility's most recent EPCRA Tier II report, lead to improvements in facility safety and better regulatory compliance? Would disclosing a summary of the facility's compliance audit, PHA, or incident investigation reports to the LEPC result in improvements in emergency planning and response? Would such disclosures raise any concerns regarding facility security or proprietary business information?

We note that the RMP rule was published in 1996 before many of the current information-sharing technologies were conceived. While the Agency has modernized mechanisms for reporting and handling risk management plans, we have made only minor adjustments to the RMP rule for new information technologies. We have not systematically reviewed the rule to see if enhanced facility and community interaction through the use of these technologies can promote safer operations, perhaps at a reduced cost of compliance and oversight.

Ensuring that communities, local planners and local first responders have appropriate facility chemical hazard information is critical to the health and safety of the responders and the local community. In response to Executive Order 13650, EPA seeks to find ways to enhance information sharing and collaborative planning between chemical facility owners and operators, tribal and local emergency planning committees and first responders. EPA is interested in identifying ways to make RMP-regulated facility information more readily available to local responders and local communities without creating additional security concerns. EPA requests information on the following questions:

a. Should EPA amend the RMP regulation to require RMP-regulated facilities to post chemical hazard-related information on their Web sites (if they have one) such as RMP chemical names, chemical quantities, executive summaries, links to LEPCs, community emergency plans, Safety Data Sheets (SDS) for hazardous chemicals present on site, EPCRA Tier 2 reports, release notification reports, accident history and cause and other similar information? What requirements should be considered for facilities that do not have a Web site?

b. Would requiring facilities to make this information available on the company Web site promote improved regulatory compliance? What additional economic burden would be associated with such a requirement?

c. Do RMP-regulated facility owners/operators have any safety or security concerns with posting the executive summary from the RMP, or linking to EPCRA reports and community response plans on the company Web sites? Please explain any concerns regarding specific elements of this information.

d. Would posting the RMP executive summary on a Web site cause facility owner/operators to remove important information from the executive summary? Does EPA need to better define the contents of an executive summary in order to allay security concerns?

e. Is there other information (web-based or otherwise) that would assist local communities, emergency planners, and responders in understanding facility risks that should be made publicly available? For example, would disclosure of the facility's PHA or compliance audit to local authorities such as the LEPC result in improved safety?

f. Does your facility interact with community groups (e.g., a citizen advisory panel)? If so, what information do you provide to such groups?

g. Are there other activities or measures that RMP-facility owner/operators can use to ensure that communities, planners, and responders have access to appropriate information?

h. Can the use of social media or other forms of community outreach be incorporated into hazard assessment, prevention, and response to leverage community involvement in oversight? For example, would increased public disclosure of RMP-related information, such as accidental releases, near misses, and subsequent safety enhancements, or increased community involvement in facility emergency response planning, lead to improvements in facility safety? Please identify aspects of the RMP rule where there are opportunities for community involvement.

9. Threshold Quantities and Off-Site Consequence Analysis Endpoints for Regulated Substances Based on Acute Exposure Guideline Level Toxicity Values

EPA is considering the use of Acute Exposure Guideline Levels (AEGLs)[58] developed by the National Advisory Committee (NAC) for AEGLs for Hazardous Substances (NAC/AEGL Committee) to recalculate RMP reporting thresholds and toxic endpoints for off-site consequence analyses in order to better reflect the potential for adverse effects of an accidental release upon a community.

EPA originally set the TQs for the RMP toxic substances using a ranking method similar to that used in developing the threshold planning quantities (TPQs) for the EPCRA EHSs. A factor for each toxic chemical based on its toxicity level of concern ''LOC'' and its potential to become airborne and disperse ''V'', was derived and used to develop a ranking factor equal to LOC divided by V. Chemicals with lower ranking factors were assigned lower thresholds. A low numerical LOC value

[58] *http://www.epa.gov/oppt/aegl/.*

represents a high toxicity and a high value of V represents a high potential for air dispersion. Therefore, the ranking factor was designed such that lower LOC values or higher V values (or both) resulted in lower ranking factors. For example, the V for all gases is assigned a value of 1, which is higher than the calculated values of V for all liquids. For the RMP substances, thresholds were assigned based on order of magnitude ranges in the ranking factor, using TQ categories of 500 pounds, 1,000 pounds, 2,500 pounds, 5,000 pounds, 10,000 pounds, 15,000 pounds and 20,000 pounds (59 FR 4478, January 31, 1994).

The toxicity LOC was the maximum short term exposure concentration level in air for each chemical that would not lead to serious irreversible health effects in the general population when exposed for a relatively short duration. The Immediately Dangerous to Life and Health (IDLH) value developed by the National Institute of Occupational Safety and Health (NIOSH) or an approximation of the IDLH based on animal toxicity data was used as the basis for the LOC.

The IDLH is defined as the maximum concentration from which one could escape within 30 minutes without any escape-impairing symptoms or any irreversible health effects. The IDLH was presented in the 1990 edition of the NIOSH Pocket Guide to Chemical Hazards and was used where available to develop the LOC toxicity levels for RMP toxic substances. For substances without a published IDLH value, a value equivalent to the IDLH was derived from mammalian toxicity data using a methodology described in Appendix D of the Technical Guidance for Hazard Analysis, Emergency Planning for Hazardous Substances.[59]

In some cases, revised or updated toxicity data were used, based on the December 1990 Registry of Toxic Effects of Chemical Substances (RTECS) rather than the toxicity data used to derive TPQs for EHSs.

EPA is considering recalculating the current IDLH-based TQs for the following reasons:

- The IDLH is based upon response of healthy male worker-population and does not take into account the exposure of more sensitive individuals, such as the elderly, pregnant women, children or people with various health problems.
- The IDLH is based upon a maximum 30-minute exposure period which may not reflect (may underestimate) actual exposures to accidental airborne releases.
- The IDLH may not reflect the concentration that could result in serious but reversible injury because IDLHs were designed only to protect workers against concentrations that would prevent death or irreversible health effects or would prevent other deleterious effects (e.g. disorientation or incoordination) that would prevent escape.

EPA recognized the limitation of using the IDLH values when it developed the TPQs for the EHSs in 1986 and 1987, but the agency was only just beginning the development of more appropriate chemical emergency exposure levels for the general public. Therefore, EPA chose to continue using the IDLH because there were many more published IDLH values available than other potential exposure limits and because there was already a method available for deriving an IDLH equivalent from toxicity data.[60]

Due to the limitations outlined above, EPA is now considering the use of AEGLs to recalculate RMP TQs. AEGLs represent threshold exposure limits (exposure levels below which adverse health effects are not likely to occur) for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours. AEGLs are developed by the National Advisory Committee (NAC) for AEGLs for Hazardous Substances (NAC/AEGL Committee), which was established to identify, review, and interpret relevant toxicologic and other scientific data and develop AEGLs for high-priority acutely toxic chemicals.[61] AEGLs are developed for five exposure periods (10 and 30 minutes, 1 hour, 4 hours, and 8 hours) and distinguished by varying degrees of severity of toxic effects. AEGLs are designed to protect the general population, including susceptible subpopulations, such as infants, children, the elderly, persons with asthma, and those with other illnesses, which are groups not generally considered in the development of workplace exposure levels. AEGLs have been developed or are now under development for 471 priority chemicals.

A chemical may have up to three AEGLs values, each of which corresponds to a specific tier of health effects. The three AEGL tiers are defined as follows:

- AEGL–1 is the airborne concentration, expressed as parts per million or milligrams per cubic meter (ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.
- AEGL–2 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.
- AEGL–3 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

The use of AEGLs to recalculate RMP reporting thresholds would better reflect the potential for adverse effects of an accidental release upon individuals in a community compared to IDLHs because AEGLs take into account the potential exposure of more sensitive individuals, the potential for longer periods of exposure, and the potential for serious but reversible injuries.

In situations where no AEGL exists for a chemical, EPA would use Emergency Response Planning Guidelines (ERPGs), if available, to recalculate reporting thresholds. ERPGs estimate the concentrations at which most people will begin to experience health effects if they are exposed to a hazardous airborne chemical for 1 hour. (Similar to IDLH values, however, sensitive members of the public—such as old, sick, or very young people—aren't covered by these guidelines and may experience adverse effects at concentrations below the ERPG values.) ERPGs are developed by the Emergency Response Planning committee of the American Industrial Hygiene Association (AIHA). ERPGs could be used to help protect the public when AEGLs aren't available and there has been a chemical release that is short-term in duration. There are about 145 chemicals with ERPGs.[62] A chemical may have up to three ERPG values, each of which corresponds to a specific tier of health effects.

[59] USEPA/FEMA/DOT, Technical Guidance for Hazard Analysis, Emergency Planning for Hazardous Substances, December 1987, *http://www2.epa.gov/sites/production/files/2013-08/documents/technical_guidance_for_hazard_analysis.pdf.*

[60] USEPA. June 21, 1992. Technical Background Document: Development of Threshold Quantities for List of Regulated Substances for Accidental Release Prevention, Document No. II–B–2, Docket No. A–91–74, page 7.

[61] see: *http://www.epa.gov/oppt/aegl/.*

[62] *http://response.restoration.noaa.gov/erpgs.*

The three ERPG tiers are defined as follows:

- ERPG–3 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing life-threatening health effects.
- ERPG–2 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.
- ERPG–1 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient health effects or perceiving a clearly defined, objectionable odor.

EPA previously used EPRG values in 1996 (61 FR 31668, June 20, 1996) to establish toxic endpoints (i.e., air concentrations) for each RMP toxic chemical to be used when conducting the off-site consequence analysis (OCA). The endpoints chosen were the ERPG–2 values developed by AIHA; the toxic endpoint was the level of concern (LOC) from EPA's 1987 Technical Guidance for Hazards Analysis for those substances that did not have an established ERPG–2, updated where necessary to reflect new toxicity data. EPA chose ERPG–2 values first because they were specifically developed by a scientific committee for emergency planning to protect the general public in emergency situations and are subject to peer review. EPA had rejected use of the ERPG–3, which is a lethal exposure level, because it is not protective enough of the public in emergency situations.

One consequence however, of the agency using separate toxicity values for TQs (based upon IDLH) and toxic endpoints (based upon EPRG–2) for the RMP regulations as a whole is some inconsistency in the representation of the relative toxicities of certain substances compared to others. For example, chlorine and sulfur dioxide have relatively similar ERPG–2 toxic endpoints, 0.0087 mg/L and 0.0078 mg/L, respectively, but chlorine is listed with a reporting threshold of 2,500 pounds while sulfur dioxide has a reporting threshold of 5,000 pounds. As gases, both chlorine and sulfur dioxide have the same air dispersion factor (V) of 1. The difference in thresholds is due to the use of 1990 IDLH values, with chlorine having an IDLH (0.087 mg/L or 30 ppm), that suggests it is three times more toxic than sulfur dioxide (IDLH of 0.261 mg/L or 100 ppm). To remedy such issues, EPA is considering the use of AEGLs as the basis for determining both the RMP reporting thresholds and the toxic endpoints. Furthermore, in those cases where an AEGL is not available, using EPRG–2 values to calculate both the reporting threshold and toxic endpoint will also remove such inconsistencies. Finally, using AEGLs when available to recalculate current toxic endpoints will also take into account the potential exposure of more sensitive individuals, which is not addressed when using ERPG–2 values.

With few exceptions, AEGL–2 values are significantly lower than LOC values for a given substance, and generally somewhat lower than the corresponding ERPG–2 value. However, this does not necessarily mean that TQs would always decrease. As indicated above, when originally developing TQs, EPA used the LOC value divided by the V factor for each chemical to develop a ranking index. Substituting AEGL–2 values for LOC values and recalculating the ranking index values would generally result in much lower index values. However, index values do not correlate directly to a TQ. Instead, a range of index values was assigned a TQ. For example, all substances with index values less than 0.01 were assigned a TQ of 500 pounds, substances with index values greater than or equal to 0.01 and less than 0.05 were assigned a TQ of 1000 pounds, substances with index values greater than or equal to 0.05 and less than 0.1 were assigned a TQ of 2500 pounds, and so on, up to the maximum TQ value of 20,000 pounds. If EPA used the new index values to assign TQs based on these current ranges, then TQs for substances that currently have higher TQs would tend to drop, while TQs for substances with lower TQs would generally remain unchanged. Therefore, under this scenario, most substances would be grouped into the lower TQs.

Alternatively, if EPA established TQs by redefining the index value ranges for each TQ according to the new range of index values alone (i.e., disregarding the old index ranges), then the change would have the effect of reshuffling substances into new TQs. In this scenario, incorporating AEGL values would likely result in reducing the TQ for some substances (those with the lowest AEGL-to-LOC ratio), while raising it (or causing no change) for others. As the purpose of assigning TQs according to a distribution of index values was to assign lower TQs to the more toxic and easily dispersed substances and higher TQs to less toxic and less easily dispersed substances, this approach may be more appropriate.

Adopting AEGL–2 values in place of ERPG–2 values to establish new toxic endpoints would have a more direct effect. AEGL–2 values are often, but not always, lower than the existing toxic endpoints. Where the AEGL value is lower than the current toxic endpoint for a particular substance, the new toxic endpoint would likewise be lower, and vice versa. The practical effect of changing toxic endpoints would be to change the off-site consequence analysis distance to endpoint for a given substance and release quantity. For all processes containing substances with new lower toxic endpoints, larger worst case and alternative release scenario zones would result, whereas processes containing substances with new higher toxic endpoints would have smaller off-site consequence zones. If most toxic endpoints were to either decrease or remain the same, another result would likely be that fewer regulated processes would be eligible for Program 1.

EPA requests information on the following questions regarding recalculating reporting thresholds and/or toxic endpoints using AEGLs (or EPRG values when AEGLs are not available):

a. Would revising the RMP rule to incorporate AEGL–2 and ERPG–2 values (when an AEGL is not available), as the basis for TQs and toxic endpoints make the RMP rule more protective of human health and the environment? Would it result in significant changes to the universe of RMP-regulated facilities due to potential changes in TQs? If so, what number and types of facilities would be most affected and what changes would occur?

b. The IDLH values used for setting the existing TQs are based on an exposure period of 30 minutes. If the IDLH was not available, the acute toxicity data used to determine the equivalent IDLH varied depending on the chemical and actual study, and these numbers typically ranged from 1 to 8 hours. The ERPG–2 values used for the toxic endpoints represent an exposure period of 1 hour. Given that AEGLs are established with five different exposure periods (10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours), which exposure time should be used if the AEGL is used to determine the TQs and/or toxic endpoints?

c. What should be the hierarchy for developing an alternative or equivalent LOC when an AEGL value has not been established for a toxic substance? Should ERPG values be used instead if they exist? If no ERPG value exists, should an LOC based on the IDLH value

be used instead if it exists? If there is no IDLH value, how should the LOC be calculated for either the TQ or toxic endpoint? Is there an alternate method for establishing an equivalent LOC for those chemicals not having an AEGL or ERPG that will result in an appropriate TQ?

d. Currently, RMP worst-cast scenarios can be based on 10-minute or 60-minute release times. Because many AEGL–2 values are established for 1-hour, 4-hour and 8-hour exposure periods, should requirements for determining the worst-case and alternative release scenarios also incorporate four and eight hour release times using the 4-hour and 8-hour AEGL–2 values for a particular toxic chemical?

e. Should EPA consider using AEGL–1 rather than AEGL–2 values for calculating reporting thresholds and toxic endpoints in order to address acute effects that are transient and reversible (such as discomfort and irritation)?

f. What would be the economic impacts of recalculating TQs as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to recalculating TQs?

10. Program 3 NAICS Codes Based on RMP Accident History Data

When developing the RMP, the Agency scaled the regulatory requirements based on the potential risk posed by a source and the steps needed to address the risk, rather than imposing identical requirements on all sources. To this end, processes subject to RMP requirements were divided into three tiers: Programs 1, 2, and 3 (see section I.C). Eligibility for any given Program is based on process criteria so that classification of one process in a Program does not influence the classification of other processes at the source. The Agency established the most stringent RMP requirements under Program 3 for those industry sectors that represented a potentially higher risk of accidental releases.

Industry accident records represent a reasonable criterion for identifying high risk sources. If an entire industry has a long history of accidental releases, it may indicate that the materials handled and handling conditions generate a higher potential for serious releases, or that the government or industry standards applicable to that industry area are not effectively minimizing risks. Additionally, accident history associated with industry sectors was identified by EPA as a better surrogate for underlying risk than individual source accident histories because accidents are rare events; a source with no accidental releases over the previous five years is not necessarily safe. Further, serious chemical accidents occur infrequently even at sources with poor process safety practices.

Program 3 eligibility is based in part on the NAICS associated with the covered process.[63] The specific codes identified for Program 3 were based on an analysis of reported accident histories within industry areas, selecting those that evidenced a higher risk potential.[64] EPA selected the industry sectors that showed a high frequency of the most serious accidents across a significant percentage of all sources within the sector to avoid mischaracterizing an industry based on isolated, problematic sources. Accounting for the number of reports from individual sources was intended to avoid selecting a sector because of a small number of sources with serious safety problems. The analysis included not only off-site impacts, but also accidental releases that caused death, hospitalizations, or injuries on site, as these may serve as an indicator of significant safety problems that could lead to releases with off-site impacts. Program 3 applies to processes not eligible for Program 1 and in NAICS 32211 (pulp mills), 32411 (petroleum refineries), 32511 (petrochemical manufacturing), 325181 (alkalies and chlorine), 325188 (all other inorganic chemical manufacturing), 325192 (other cyclic crude and intermediate manufacturing), 325199 (all other basic organic chemical manufacturing), 325211 (plastics and resins), 325311 (nitrogen fertilizer), and 32532 (pesticide and other agricultural chemicals). Program 3 also applies to all processes subject to the OSHA PSM standard, unless the process is eligible for Program 1.

The RMP national database now contains nearly two decades of accident history reports from covered sources, and the Agency believes that these reports represent a more comprehensive picture of the relative accident risks associated with different industry sectors regulated under the rule than was available to the Agency prior to the rule's publication. Based on these accident reports, the ten NAICS codes most frequently associated with accidents in RMP-regulated processes are 32411 (petroleum refineries), 325199 (all other basic organic chemical manufacturing), 325188 (all other basic inorganic chemical manufacturing), 22131 (water supply and irrigation systems), 42491 (farm supplies merchant wholesalers), 22132 (sewage treatment facilities), 325181 (alkalies and chlorine manufacturing), 311615 (poultry processing), 49312 (refrigerated warehousing and storage), and 32211 (pulp mills).[65] The Agency is requesting information on the appropriateness of reevaluating the NAICS industry sectors originally identified to determine Program 3 applicability based on the collected RMP data. Specifically, EPA requests information on the following questions:

a. Should industry sectors represented in RMP data as those with the most accidental releases be used to update and replace the existing set of Program 3 NAICS codes with a new set?

b. How can the RMP accident history data best be used to update the current list of NAICS codes that trigger Program 3 requirements? Should the agency take into account the number of sources in each sector, or the severity of reported accidents, or other factors, in selecting updated Program 3 NAICS codes? Is the methodology used to develop the SIC/NAICS code list applicable to the RMP accident history database?

c. Would limiting the data analysis or the selection of NAICS codes to only those industry sectors represented in the RMP data provide a complete and accurate picture of high risk industry sectors?

d. Should an analysis of the RMP data be combined with an analysis of other

[63] The 1996 final RMP rule based Program 3 eligibility on the old Standard Industrial Classification (SIC) code system, which assigned four-digit codes to different industry sectors. However, in 1997, the U.S. Government, in cooperation with the governments of Canada and Mexico, adopted a new industry classification system, the North American Industry Classification System (NAICS), to replace the SIC codes. NAICS codes are either five or six digits, depending on the degree to which the sector is subdivided. As a result, in 1999 EPA revised RMP requirements whose applicability was originally based on SIC codes (64 FR 964, January 6, 1999). All ''SIC code'' references were replaced with ''NAICS code'' and the nine SIC codes subject to Program 3 prevention program requirements were replaced with ten NAICS codes.

[64] EPA Report: Development of Decision Criteria For Accident History by SIC Code Approach and 100 or More Employee Approach, EPA Docket Number HQ–OAR–2004–0365, February 28, 1995.

[65] We note that for purposes of categorizing RMP processes based on accident frequency, some different NAICS codes represent essentially the same type of chemical process. For example, facilities in NAICS 311615 (poultry processing) and 49312 (refrigerated warehousing and storage) generally become RMP-regulated as a result of using large anhydrous ammonia refrigeration systems. Similarly, there are several NAICS codes for RMP-regulated processes that represent bulk storage of anhydrous ammonia by agricultural chemical distribution facilities. EPA could account for this by aggregating accidents from similar process types when updating Program 3 NAICS codes.

current accident history databases to inform any revisions/updates? If so, what other databases should be used? How much weight should be given to the RMP data set in comparison to other sources?

e. Should the original NAICS codes continue to be included? Would not including the NAICS codes historically identified under Program 3 cause increase risks to those industry sectors by having them no longer subject to the more stringent measures?

f. Should an analysis of accident history data be limited to a specific time frame?

g. Would it cause confusion within the regulated community to change the list of NAICS codes for which Program 3 is required?

h. What would be the economic impacts of modifying the list of NAICS codes for which Program 3 is required? Are there any special circumstances involving small entities that EPA should consider with respect to modifying the list of covered NAICS codes?

11. The ''Safety Case'' Regulatory Model

The ''safety case'' regulatory model [66] is a framework for regulating high-risk industries where owners or operators of industrial facilities are required to demonstrate to the regulator that they have reduced risks to a level that is ''as low as reasonably practicable'', or ALARP. In the safety case model, operators must present to regulators a structured argument, supported by a body of evidence that provides a compelling, comprehensible and valid case that a system is safe for a given application in a given operating environment. This regulatory approach is used in the chemical and refining industries by some countries outside the U.S., including the United Kingdom, Australia, Norway, and others, and is similar in practice to the U.S. regulatory regime for nuclear reactor facilities regulated by the NRC.

In its December 2013 Draft Regulatory Report on the Chevron Richmond Refinery Pipe Rupture and Fire, the CSB advocates the safety case approach as a safety management framework for U.S. refineries.[67] The CSB specifically recommends that the California legislature adopt the safety case approach for refineries in California, and that OSHA, as part of that Agency's response to Executive Order 13650, ''develop questions and evaluate issues raised from the findings and conclusions in this report concerning the safety case regime.'' As the CSB report was published after OSHA published its RFI under Executive Order 13650, OSHA was not able to include questions concerning the CSB's safety case recommendation within its RFI. However, because the OSHA PSM standard and EPA RMP regulation are closely linked, and together constitute the federal regulatory framework for chemical process safety management regulation in the U.S., EPA believes it is appropriate for the Agency to raise this issue within this RFI.

Completely replacing the current RMP regulation (and PSM standard) with a safety case approach would require significant changes to the existing regulatory regime for chemical process safety in the United States. Nevertheless, EPA is requesting public comment on whether EPA and OSHA should consider these actions. As an alternative to a wholesale adoption of the safety case approach, EPA and/or OSHA could potentially implement selected aspects of the approach within the current regulatory framework. For example, EPA and OSHA could require owners and operators to submit a PHA or a similar document to EPA and OSHA, and require Agency approval of the PHA. Also, EPA and OSHA could limit the applicability of the safety case approach to selected categories of high-risk facilities, such as petroleum refineries.

EPA requests information on the advantages and disadvantages of adopting a safety case approach to replace the RMP regulation and PSM standard, or alternatively, of incorporating aspects of the approach into current regulations or for selected categories of facilities. In particular, EPA requests information on the following questions:

a. If you own or operate any RMP or PSM-covered facilities and also own or operate facilities in countries that use a safety case regulatory regime, please describe the process of developing and obtaining approval for your safety case. How long does development and approval of a safety case take for a large petroleum refinery or chemical processing facility? What are the advantages and disadvantages of the safety case approach in comparison to the existing U.S. regulatory regime for chemical process safety? Is there any evidence that the safety case approach reduces the frequency and severity of accidental releases and near misses? If so, please provide any information, data, or studies to EPA that demonstrate these effects. How expensive is it for facility owners to implement the safety case approach in comparison to implementing RMP or PSM? Do you already incorporate aspects of the safety case approach in your risk management program?

b. The CSB Draft Regulatory Report on the Chevron Richmond Refinery Pipe Rupture and Fire [68] highlights the NRC as a U.S. regulator that has established a safety case approach for licensing and oversight of commercial nuclear power plants in the United States. The NRC oversees approximately 100 nuclear reactor and 3000 nuclear materials facilities in the U.S.[69]; the NRC has nearly 4000 employees and an annual budget of over $1 billion.[70] What additional resources would be required by EPA and OSHA in order to establish and oversee a safety case regulatory regime for RMP and PSM-covered facilities?

c. Is the safety case approach suitable for all RMP and PSM covered facilities, or, if adopted, should it be limited to only the most high-risk facilities, such as petroleum refineries and other high-risk chemical processing facilities?

d. What would be the economic impacts of moving to a safety case based regulatory regime for chemical facility safety? Are there any special circumstances involving small entities that EPA should consider with respect to safety case based approach?

12. Streamlining RMP Requirements

In addition to the items listed above, EPA is interested in gathering information on any other areas within part 68 that should be modernized, strengthened, or clarified. In particular, EPA invites comment on any potential revisions to the RMP rule that would make it easier for regulated sources to comply with its requirements. EPA also requests information on the following questions:

a. Are there steps that EPA could take to simplify the process of determining whether the RMP rule applies to particular facilities? Are there other potential revisions to the rule that would make it easier for regulated entities to comply with its provisions?

b. Are there steps that EPA could take to simplify the RMP submission process? For example, are there advances in electronic reporting or information technology that EPA could use in order to make RMP submissions easier?

[66] *http://www.csb.gov/working-papers-on-the-safety-case-regulatory-model-and-its-attributes/.*

[67] At its January 15, 2014, meeting, the Board refused to endorse this aspect of the draft report. The majority directed the CSB staff to revise the report within 120 days. *http://www.contracostatimes.com/rss/ci_24922079.*

[68] *http://www.csb.gov/assets/1/19/CSB_Chevron_Richmond_Refinery_Regulatory_Report.pdf.*

[69] *http://www.nrc.gov/info-finder.html.*

[70] *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v29/fy2014-cbj.pdf.*

c. Should EPA require that RMP submissions be certified by a senior corporate official, such as the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, or the equivalent to ensure corporate-wide awareness and accountability in the RMP submission?

d. Is the three-tiered program level structure of the RMP regulation appropriate, or should EPA consider simplifying the rule to make only two program tiers, or only a single prevention program applicable to all facilities?

e. Are the accident prevention program elements clearly defined? Should EPA further clarify any of the existing elements?

f. Are the regulatory terms and definitions contained in section 68.3 sufficiently clear? Are there additional terms that EPA should define in this section?

Dated: July 24, 2014.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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FEDERAL REGISTER PAGES AND DATE, JULY

37155–37616 1
37617–37926 2
37927–38246 3
38247–38450 7
38451–38746 8
38747–39288 9
39289–39952 10
39953–40618 11
40619–41084 14
41085–41404 15
41405–41630 16
41631–41876 17
41877–42180 18
42181–42448 21
42449–42646 22
42647–42972 23
42973–43230 24
43231–43592 25
43593–43916 28
43917–44092 29
44093–44250 30
44251–44634 31

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9145 37615
9146 38245
9147 42969
9148 44251
9149 44253
9150 44255
9151 44257

Executive Orders:
11246 (Amended by EO 13672) 42971
11478 (Amended by EO 13672) 42971
13671 39949
13672 42971

Administrative Orders:
Memorandums:
Memorandum of July 11, 2014 43917
Notices:
Notice of July 15, 2014 41875
Notice of July 18, 2014 42645
Notice of July 29, 2014 44259

5 CFR

300 43919
315 43919
335 43919
410 43919
537 43919
894 41405
900 43919
1651 ..... 38747, 44261
3801 44261
9301 37927

Proposed Rules:
532 41927
843 41928
890 43969
Ch. XXII 37963

6 CFR

7 44093

7 CFR

1 44101
2 44101
15d 41406
247 38748
301 41877
319 44117
400 37155
402 37155
407 37155
457 ..... 37155, 43593
906 ..... 37928, 41411
944 41411
946 41413
980 41413
983 37930
985 ..... 37932, 43231
987 41415
1700 44101
3800 44101

Proposed Rules:
319 ..... 41930, 43972
340 41934
354 37231
810 43281

8 CFR

100 42449
1003 39953

9 CFR

56 ..... 38752, 44263
77 43923
145 ..... 38752, 44263
146 ..... 38752, 44263
147 ..... 38752, 44263

Proposed Rules:
93 41652
94 43974
320 42464

10 CFR

72 44264
110 39289
140 38768
170 42452
171 42452
429 ..... 38130, 40542
430 ..... 37937, 38130, 40542, 41417, 43927
431 40542
1704 42181

Proposed Rules:
20 43284
26 42474
30 ..... 42224, 42410
32 ..... 42224, 42410
35 ..... 42224, 42410
51 42989
61 38796
72 ..... 41935, 44318
73 42474
Ch. II 37963
Ch. III 37963
429 ..... 37963, 41456
430 41656
460 43300
Ch. X 37963

12 CFR

3 44120
8 38769
208 37166
217 44120
225 37166
226 43232
324 44120

336 42181
346 42183
390 ....42181, 42183
1026 41631
1238 37167

Proposed Rules:

46 37231
225 37420
252 37420
325 37235
327 42698
348 42225
390 ....42225, 42231, 42235
Ch. VI 42238
611 43301
615 43301

14 CFR

25 ....41418, 41419, 41633, 43232, 43233, 43237, 43239
39 ....37167, 37169, 37171, 39300, 39956, 39958, 39959, 39961, 41085, 41087, 41090, 41093, 41095, 41098, 41101, 41104, 41108, 41111, 41114, 41117, 41120, 42647, 42649, 42652, 42655, 42658, 42660, 42663, 43604, 43607, 43611, 43613, 43616, 44268
71 ....37173, 37174, 38772, 41877, 41878, 44270
73 38774
91 ....41125, 43240
97 ....39963, 39970, 40619, 40621
135 ....41125, 43619
234 37938
235 37938

Proposed Rules:

Ch. I 42483
25 ....37670, 37674, 38266, 41457, 43318
27 44320
29 44320
33 44321
39 ....37239, 37243, 37246, 37248, 37676, 37679, 37681, 37684, 37965, 38797, 38799, 38801, 38806, 40018, 41145, 41459, 41462, 41464, 41466, 41658, 41661, 41938, 41940, 41943, 41946, 42708, 42710, 42716, 42719, 42721, 42989, 43322, 43981, 43983, 44142, 44144, 44147
60 39462
71 ....37967, 40690, 41148, 42723
73 39344
400 42475
401 42475
417 42241
431 42241
435 42241
1204 37252

15 CFR

744 42452
774 37551
922 41879

Proposed Rules:

774 37548

16 CFR

20 40623
425 44271

Proposed Rules:

304 40691
1110 37968
1112 42724
1228 42724

17 CFR

1 44125
23 41126
30 44125
140 44125
240 ....38451, 39068
241 39068
249 38451
250 39068
400 38451
401 38451
402 38451
403 38451
405 38451
420 38451
449 38451
450 38451

Proposed Rules:

1 37973
15 37973
17 37973
19 37973
32 37973
37 37973
38 37973
140 37973
150 37973

18 CFR

2 42665
4 42973
35 42665
40 42670

Proposed Rules:

35 43536
40 ....42734, 43987
154 43994

19 CFR

101 42449

20 CFR

404 41881
405 44276
416 41881

21 CFR

106 41127
107 41127
510 37617
514 37175
520 ....37617, 44277
522 ....37617, 44277
529 ....37617, 44277
556 37617
558 ....37617, 37621, 37622, 44277
876 ....43241, 43247
882 ....37946, 38457
890 37948
1150 39302
1308 37623

Proposed Rules:

15 41149
216 37687
573 ....38478, 43325

22 CFR

13 43246
34 39972
96 40629
121 37536
236 41883
1305 44278

Proposed Rules:

181 39346

24 CFR

200 ....41422, 42187
207 43929
257 41422
4000 41422
4001 41422

Proposed Rules:

5 40019
943 40019

25 CFR

Proposed Rules:

83 44149
151 37254

26 CFR

1 ....37175, 37181, 37630, 37633, 38247, 39311, 41127, 41425, 41636, 41886, 42189, 42193, 42675, 42679, 43622, 44280
31 37181
51 43631
301 ....41127, 41132, 41889, 44282
602 ....37633, 43631

Proposed Rules:

1 ....37697, 38809, 40031, 43693, 43694, 44324
51 43699
301 41152

27 CFR

9 ....41891, 41894

29 CFR

1910 37189
4022 41133

Proposed Rules:

10 38478

30 CFR

70 38247
71 38247
72 38247
75 38247
90 38247

Proposed Rules:

100 44494
816 43326
817 43326

31 CFR

210 42974
541 39312
553 38248
558 37190

Proposed Rules:

34 44325
100 41468
1010 42486

32 CFR

199 41636

Proposed Rules:

104 43700

33 CFR

1 38422
3 38422
8 38422
13 38422
19 38422
23 38422
25 38422
26 38422
27 38422
51 38422
52 38422
67 38422
80 38422
81 38422
83 37898
84 ....37898, 38422
85 37898
86 37898
87 37898
88 37898
89 38422
96 38422
100 ....37950, 38459, 38775, 39972, 39974, 42197, 43933, 43935
104 38422
105 38422
110 38422
114 38422
116 38422
117 ....37196, 37197, 38422, 39975, 40636, 40637, 40638, 41135, 41136, 41426, 41642, 41644, 43250, 43935, 43938, 43939, 44286
118 38422
120 38422
126 38422
127 38422
128 38422
135 38422
140 38422
141 38422
144 38422
147 43935
148 38422
151 ....38422, 43645
153 38422
154 38422
155 38422
156 38422
157 38422
158 38422
159 38422
160 38422
161 38422
164 38422
165 ....37197, 37198, 37200, 37202, 37204, 37207, 37209, 37644, 37950, 37952, 37953, 38422, 38459, 38462, 38776, 40640, 40642, 40644, 41137, 41644, 41898, 42197, 42211, 42981, 42983, 42984, 43250, 43255, 43256, 43257, 43646, 43648, 43935, 43940, 44127, 44128, 44288
167 38422
169 38422
174 38422
179 38422
181 38422
183 38422

Proposed Rules:

100 ....40032, 42254, 43327

140 38841
141 38841
142 38841
143 38841
144 38841
145 38841
146 38841
147 38841
165 ....38479, 39348, 42254, 43327, 43332, 43335
334 41664

34 CFR

Ch. II 40647
Ch. III 38779, 38782, 42170, 42400, 42680, 43257, 43650, 43653

36 CFR

215 44291
218 44291
262 44293
Proposed Rules:
223 44327

37 CFR

Proposed Rules:
1 40035
201 41470

38 CFR

9 44297
77 37211
Proposed Rules:
17 41153
38 37698
51 41153
52 41153
59 41153

39 CFR

20 42458
111 42460
Proposed Rules:
3050 ....37702, 42743

40 CFR

9 ....38464, 39268
13 ....37644, 41646
52 ....37222, 37224, 37646, 37956, 38787, 39322, 39330, 40662, 40664, 40666, 40673, 40675, 41427, 41439, 41647, 41898, 41900, 41904, 41906, 41908, 42211, 42683, 42685, 43260, 43264, 43655, 43943, 43945, 44299
62 39334
70 43661
71 43661
80 ....42078, 42128
81 43655
82 44302
168 39975
180 ....41443, 41911, 41915
272 37226
300 42461
721 ....38464, 39268
Proposed Rules:
Ch. I 40703
13 ....37704, 42745
35 37974
49 ....41665, 41666, 41846
51 41157
52 ....37255, 37258, 37976, 38273, 38810, 39351, 40693, 40701, 40702, 41473, 41476, 41486, 41496, 41509, 41948, 41949, 42258, 42745, 42752, 42991, 43338, 43345, 43350, 43704, 43998
60 ....37259, 37981, 39242, 41752, 41772, 41796
61 42275
62 39360
63 37850
68 44604
81 ....42258, 43704
82 38811
98 44332
168 40040
180 ....40043, 43350
272 37261

41 CFR

Proposed Rules:
102–117 41667

42 CFR

482 44128
Proposed Rules:
403 40318
405 ....40208, 40318
409 38366
410 40318
411 ....40208, 40916
412 40916
413 40208
414 ....40208, 40318
416 40916
419 40916
422 40916
423 40916
424 ....38366, 40916
425 40318
484 38366
488 38366
498 ....38366, 40318

43 CFR

Proposed Rules:
4 44150

44 CFR

8 44093
64 ....37650, 37652, 37657, 43668

45 CFR

144 42984
146 42984
147 42984
148 42984
153 ....37661, 42984
154 42984
155 42984
156 42984
158 42984
Proposed Rules:
155 37262
156 37262

46 CFR

108 44129
117 44129
133 44129
160 44129
164 44129
180 44129
199 44129
506 37662
515 42986
Proposed Rules:
10 38841
11 38841
12 38841
13 38841
14 38841
15 38841

47 CFR

2 ....39976, 40678
15 ....40678, 40680
20 ....39977, 43956
25 ....44140, 44312
27 ....39336, 41448
36 39164
54 39164
64 40003
69 39164
73 41454
74 40680
90 ....39336, 40680
Proposed Rules:
1 ....37705, 37982
8 37448
11 41159
27 37705
54 ....39196, 42276, 44352
73 37705
79 44150

48 CFR

Ch. I 43574, 43591
1 43575
4 ....43580, 43590
13 43580
14 43580
15 43580
19 43580
22 43575
31 43589
32 43590
52 43575
App. A to Ch. 2 42214
211 44313
212 44313
225 44314
232 44313
236 44314
1516 37958
1552 37958
1803 43958
1816 43958
1852 43958
Proposed Rules:
15 39361
215 ....41172, 42491
242 ....41172, 42491
252 ....41172, 42491
1511 41949
1552 41949
3401 41511
3403 41511
3404 41511
3405 41511
3406 41511
3407 41511
3408 41511
3409 41511
3411 41511
3413 41511
3414 41511
3415 41511
3416 41511
3417 41511
3419 41511
3422 41511
3425 41511
3427 41511
3428 41511
3430 41511
3431 41511
3432 41511
3433 41511
3434 41511
3437 41511
3439 41511
3442 41511
3444 41511
3447 41511
3448 41511
3452 41511

49 CFR

171 40590
172 40590
173 ....40590, 43266
174 40590
175 40590
176 40590
177 40590
178 40590
233 37664
395 39342
573 43670
577 43670
579 43670
595 38792
821 ....41649, 41650
1002 ....41137, 41651
1333 38254
Proposed Rules:
171 41185
172 41185
173 41185
177 41185
219 43830
535 38842
571 39362
574 42999
594 44363
821 41668

50 CFR

Ch. I 37578
2 43961
10 43961
13 43961
14 43961
15 43961
16 43961
17 ....38678, 39756, 42687, 43132, 43961
18 43961
20 43961
21 43961
22 43961
23 43961
36 43961
80 43961
86 43961
91 43961
100 43961
Ch. II 37578
223 ....38214, 40004
224 38214
226 39856
404 44316
622 ....38475, 38476, 42462
635 ....38255, 43267
648 ....38259, 41141, 41918, 42696, 44141

660.....43268, 43269
679 .....37960, 37961, 37962, 40016, 41454, 41455, 42987, 43679

Proposed Rules:
17 .....37706, 41211, 41225, 43358
20.....44580
216.....43007
218.....41374
223.....40054
224.....40054
300.....40055, 43373
600.....43017
622 .....37269, 37270, 44369
648.....38274, 41530
660.....43017
679 .....37486, 43377, 44372
697.....43379
700.....40703

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 July 30, 2014

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