AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 79 Friday,

No. 158 August 15, 2014

Pages 48015–48652

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 79, No. 158

Friday, August 15, 2014

Agricultural Marketing Service
NOTICES
United States Standards for Grades of Carcass Beef, 48112–48113

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Antitrust Division
NOTICES
Changes under National Cooperative Research and Production Act:
American Wood Protection Association, Inc., 48251–48252
Precast/Prestressed Concrete Institute, 48252

Antitrust
See Antitrust Division

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bureau of Consumer Financial Protection
RULES
Truth in Lending Annual Threshold Adjustments, 48015–48017

Centers for Disease Control and Prevention
NOTICES
Bulletins:
Promoting Health and Preventing Disease and Injury through Workplace Tobacco Policies, 48169

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48169–48170

Coast Guard
RULES
Safety Zones:
Hornblower Fireworks, East River, New York, NY, 48070
Special Local Regulations:
Cumberland River, Mile 127.0 to 128.0, Clarksville, TN, 48063–48065
Marine Events, New Jersey Intracoastal Waterway, Atlantic City, NJ, 48067–48070
Marine Events, Sunset Lake, Wildwood Crest, NJ, 48065–48067

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

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 48126–48129

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48129–48130

Defense Department
See Navy Department

Economic Development Administration
NOTICES
Trade Adjustment Assistance Eligibility; Petitions, 48116–48117

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State Educational Agency and Local Educational Agency—School Data Collection and Reporting, 48130–48131
Meetings:
Advisory Committee on Student Financial Assistance, 48131–48132

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Manufactured Housing:
Appliance Standards and Rulemaking Federal Advisory Committee; Manufactured Housing Working Group; Meeting, 48097–48098
NOTICES
Authority to Import and Export Gas:
Freeport LNG Expansion, LP and FLNG Liquefaction, LLC, et al., 48132
Procedures for Liquefied Natural Gas Export Decisions, 48132–48136

Environmental Protection Agency
RULES
National Emission Standards for Hazardous Air Pollutants:
Residual Risk and Technology Review for Flexible Polyurethane Foam Production, 48073–48090
National Pollutant Discharge Elimination System:
Cooling Water Intake Structures at Existing Facilities and Phase I Facilities; Requirements, 48300–48439
NSPS for Stationary Internal Combustion Engines:
NESHAP for Reciprocating Internal Combustion Engines, 48072–48073
Pesticide Tolerances; Exemptions from Requirements:
Sweet Orange Peel Tincture, 48090–48094
PROPOSED RULES
New Source Performance Standards:
Petroleum Refinery Sector Risk and Technology Review, 48111

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NESHAP for Epoxy Resin and Non-Nylon Polyamide Production, 48139–48140
Environmental Impact Statements; Availability, etc., 48140–48141
Meetings:
Great Lakes Advisory Board, 48141
Permits:
National Pollutant Discharge Elimination System; Oil and Gas Geotechnical Surveying and Related Activities in Federal Waters of the Beaufort and Chukchi Seas, 48147–48148
Pesticide Registrations:
Voluntarily Cancel Requests, 48141–48147

Executive Office of the President
See Trade Representative, Office of United States

Federal Accounting Standards Advisory Board
NOTICES
Reappointment of Members, 48148–48149

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 48021–48024
Bombardier, Inc. Airplanes, 48030–48032
Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes, 48018–48021
The Boeing Company Airplanes, 48024–48028
Turbomeca S.A. Turboshaft Engines, 48028–48030
Amendment of Air Traffic Services:
Routes in the Vicinity of Nabb, IN, 48032–48034
PROPOSED RULES
Airworthiness Directives:
ATR – GIE Avions de Transport Regional, 48107–48110
Bombardier, Inc. Airplanes, 48105–48107
Fuel Tank Vent Fire Protection, 48098–48105
NOTICES
Petitions for Exemptions; Summaries, 48294

Federal Communications Commission
RULES
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, 48442–48545
Radio Broadcasting Services:
Charlotte Amalie and Christiansted, VI, and Culebra, PR, 48094
Evart and Ludington, MI, 48094–48095
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48149–48151
Privacy Act; Systems of Records, 48152–48156

Federal Emergency Management Agency
NOTICES
Adjustment of Legitimate Amount in Dispute for the Dispute Resolution Pilot Program for Public Assistance Appeals, 48175

Federal Energy Regulatory Commission
NOTICES
Applications:
Chenega Bay Utilities, 48136
Combined Filings, 48137
Environmental Impact Statements; Availability, etc.:
Aguirre Offshore GasPort, LLC; Aguirre Offshore GasPort Project, 48137–48138
Exemption Terminations:
Hydraco Power, Inc., 48138–48139

Federal Labor Relations Authority
NOTICES
Opportunity to Submit Amici Curiae Briefs in a Representation Proceeding, 48156–48157

Federal Maritime Commission
NOTICES
Ocean Transportation Intermediary License Applicants, 48157
Ocean Transportation Intermediary License Reissuances, 48157–48158
Ocean Transportation Intermediary License Revocations and Terminations, 48158

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Announcement of Board Approval Under Delegated Authority, 48158–48167
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 48167–48168
Acquisitions of Shares of a Savings and Loan Holding Company, 48168

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-billed Cuckoo, 48548–48652
NOTICES
Draft Candidate Conservation Agreements; Permit Applications:
Enhancement of Survival for the Greater Sage-Grouse on Private Rangelands; Baker and Malheur Counties, OR, 48243–48244
Permit Applications:
Endangered Species; Marine Mammals, 48244–48246

Food and Drug Administration
NOTICES
Solicitation for Nominations:
Pilot Program for Medical Device Development Tools Qualification, 48170–48172

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission Committee on Food Hygiene, 48113–48114
Codex Alimentarius Commission Committee on Food Import and Export Inspection and Certification Systems, 48114–48115

Foreign-Trade Zones Board
NOTICES
Applications for Expansion under Alternative Site Framework:
Foreign-Trade Zone 106, Oklahoma City, OK, 48117

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Tonto National Forest Motorized Travel Management, 48115–48116

General Services Administration
NOTICES
Maximum Per Diem Rates for the Continental United States, 48168

Grain Inspection, Packers and Stockyards Administration
NOTICES
Designation for Georgia and Montana Areas, 48116

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Designation of a Class of Employees for Addition to the Special Exposure Cohort, 48168–48169

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Meetings:
DHS Data Privacy and Integrity Advisory Committee, 48174–48175

Housing and Urban Development Department
NOTICES
Federal Properties Suitable as Facilities to Assist the Homeless, 48176–48178
Proposed Fair Market Rents for the Housing Choice Voucher Program:
Moderate Rehabilitation Single Room Occupancy Program and Other Programs, Fiscal Year 2015, 48178–48243

Interior Department
See Fish and Wildlife Service
See National Park Service

Internal Revenue Service
RULES
Retail Inventory Method, 48034–48037

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental Assessments; Availability, etc.:
Rio Grande Canalization Project; Vado, NM, 48247–48248

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Pasta from Italy, 48121–48123
Multilayered Wood Flooring from the People's Republic of China, 48117–48119
Purified Carboxymethylcellulose from Finland, 48119–48120
Applications for Duty Free Entry of Scientific Instruments, 48123

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Refined Brown Aluminum Oxide from China; Five-Year Review, 48248–48249
Meetings; Sunshine Act, 48249
Service Contract Inventories, Fiscal Years 2012, 2013 and Planned Analysis, 2013, 48249–48250

Judicial Conference of the United States
NOTICES
Meetings:
Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure; Hearings, 48250

Justice Department
See Antitrust Division
See Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State and Local White Collar Crime Program, 48250–48251
Proposed Consent Decrees under the Clean Water Act, 48251

Justice Programs Office
NOTICES
Meetings:
Review Panel on Prison Rape; Hearings, 48252

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification and Qualification to Examine, Test, and Operate Hoists, and to Perform Other Duties, 48254–48255
Ionizing Radiation Standard, 48252–48253
Refuse Piles and Impoundment Structures—Recordkeeping and Reporting Requirements, 48253–48254

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

Mine Safety and Health Administration
NOTICES
Petitions for Modifications:
Application of Existing Mandatory Safety Standards, 48255–48256

National Aeronautics and Space Administration
NOTICES
Intent to Grant Exclusive License, 48256–48257

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 48257

National Highway Traffic Safety Administration
NOTICES
Petitions for Inconsequential Noncompliance; Decisions:
General Motors, LLC, 48294–48295

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 48173
National Institute of Biomedical Imaging and Bioengineering, 48173
National Institute of Diabetes and Digestive and Kidney Diseases, 48172–48173

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Gulf of Mexico Greater Amberjack; Commercial and Recreational Accountability Measures and Closures, 48095–48096
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Pacific Halibut and Sablefish Fisheries; Individual Fishing Quotas, 48123–48124
National Oceanographic Data Center Send2NODC Web Application, 48124
Meetings:
Atlantic Highly Migratory Species Advisory Panel, 48125
Requests for Applications:
National Marine Sanctuary Advisory Councils, 48125–48126

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 48246–48247

Navy Department
NOTICES
Meetings:
U.S. Naval Academy Board of Visitors, 48130

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
RULES
Benefits Payable in Terminated Single-Employer Plans:
Interest Assumption for Paying Benefits, 48038–48039

Postal Regulatory Commission
NOTICES
New Postal Products, 48257–48258

Postal Service
NOTICES
International Product Changes:
Global Reseller Expedited Package Contracts 4, 48258

Securities and Exchange Commission
NOTICES
Applications:
Principal Funds, Inc., et al., 48258–48262
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Credit LLC, 48280–48281
NASDAQ OMX PHLX LLC, 48269–48274, 48289–48291
New York Stock Exchange LLC, 48274–48276
The NASDAQ Stock Market LLC, 48262–48269, 48281–48285
The Options Clearing Corp., 48276–48279, 48285–48289

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48173–48174

Surface Transportation Board
NOTICES
Construction Exemptions:
California High-Speed Rail Authority, Fresno, Kings, Tulare, and Kern Counties, CA, 48295

Trade Representative, Office of United States
NOTICES
Meetings:
China's Compliance with World Trade Organization Commitments; Public Hearing, 48291–48292
National Trade Estimate Report on Foreign Trade Barriers, 48292–48294

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

Treasury Department
See Internal Revenue Service
RULES
Gulf Coast Restoration Trust Fund, 48039–48062
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48295–48296

Veterans Affairs Department
RULES
Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access, 48071–48072
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Accrued Amounts Due a Deceased Beneficiary, 48297–48298
Disability Benefits Questionnaires – Group 3, 48296–48297
Election to Apply Selected Reserve Services to Either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve, 48296
Meetings:
Geriatrics and Gerontology Advisory Committee, 48298

Separate Parts In This Issue

Part II
Environmental Protection Agency, 48300–48439

Part III
Federal Communications Commission, 48442–48545

Part IV
Interior Department, Fish and Wildlife Service, 48548–48652

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

Proposed Rules:

460 48097

12 CFR

1026 48015

14 CFR

39 (5 documents) 48018, 48021, 48024, 48028, 48030

71 48032

Proposed Rules:

25 48098

39 (2 documents) 48105, 48107

121 48098

129 48098

26 CFR

1 48034

29 CFR

4022 48038

31 CFR

34 48039

33 CFR

100 (3 documents) 48063, 48065, 48067

165 48070

38 CFR

9 48071

40 CFR

60 48072

63 (2 documents) 48072, 48073

122 48300

125 48300

180 48090

Proposed Rules:

60 48111

63 48111

47 CFR

0 48442

1 48442

2 48442

15 48442

27 48442

73 (3 documents) 48094, 48442

74 48442

50 CFR

622 48095

Proposed Rules:

17 48548

Rules and Regulations

Federal Register

Vol. 79, No. 158

Friday, August 15, 2014

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

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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (CARD ACT, HOEPA and ATR/QM)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending the regulatory text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to calculate annually the dollar amounts for several provisions in Regulation Z; this final rule reviews the dollar amounts for provisions implementing amendments to TILA under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These amounts are adjusted, where appropriate, based on the annual percentage change reflected in the Consumer Price Index in effect on June 1, 2014. The minimum interest charge disclosure thresholds will remain unchanged in 2015. The adjusted dollar amount for the penalty fees safe harbor in 2015 is $27 for a first late payment and $38 for each subsequent violation within the following six months. For HOEPA loans, the adjusted total loan amount threshold is $20,391, effective January 1, 2015. The adjusted statutory fee trigger for HOPEA loans is $1,020, effective January 1, 2015. Effective January 1, 2015, for the purpose of creditor's determination of a consumer's ability to repay a transaction secured by a dwelling, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed 3 percent of the total loan amount for a loan greater than or equal to $101,953; $3,059 for a loan amount greater than or equal to $61,172 but less than $101,953; 5 percent of the total loan amount for a loan greater than or equal to $20,391 but less than $61,172; $1,020 for a loan amount greater than or equal to $12,744 but less than $20,391; and 8 percent of the total loan amount for a loan amount less than $12,744.

DATES: This final rule is effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: David Friend, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

A. CARD Act Annual Adjustments

In 2010, the Board of Governors of the Federal Reserve System (Board) published amendments to Regulation Z implementing the CARD Act, which amended TILA. Public Law 111–24, 123 Stat. 1734 (2009). Pursuant to the CARD Act, the Board's Regulation Z amendments established new requirements with respect to open-end consumer credit plans, including requirements for the disclosure of minimum interest charge amounts and the establishment of a safe harbor provision allowing card issuers to impose penalty fees for violating account terms without violating the restrictions on penalty fees established by the CARD Act. *See* 75 FR 7658, 7799 (Feb. 22, 2010) and 75 FR 37526, 37527 (June 29, 2010). The final rule issued by the Board required that these thresholds be calculated annually using the Consumer Price Index as published by the Bureau of Labor Statistics (BLS).[1]

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of the Bureau's Regulation Z provide that the minimum interest charge thresholds will be re-calculated annually using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. When the cumulative change in the adjusted minimum value derived from applying the annual CPI–W level to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) has risen by a whole dollar, the minimum interest charge amounts set forth in the regulation will be increased by $1.00. This adjustment is based on the CPI–W index in effect on June 1, 2014, which was reported on May 15, 2014. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment reflects a 2 percent increase in the CPI–W from April 2013 to April 2014 and is rounded to the nearest $1 increment. This increase in the CPI–W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) did not trigger an increase in the minimum interest charge threshold of at least $1.00, and therefore the Bureau is not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

Penalty Fees Safe Harbor

The Bureau's Regulation Z provides that the safe harbor provision which establishes the permissible fee thresholds in § 1026.52(b)(1)(ii)(A) and (B) will be re-calculated annually using the CPI–W that was in effect on the preceding June 1. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. This adjustment is based on the CPI–W index in effect on June 1, 2014, which was reported on May 15, 2014. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. When

[1] The responsibility for promulgating rules under TILA was generally transferred from the Board to the Bureau effective July 21, 2011. The Bureau restated Regulation Z on December 22, 2011, and the Bureau's Regulation Z is located at 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011). *See* sections 1061 and 1100A of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

the cumulative change in the adjusted minimum value derived from applying the annual CPI–W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual CPI–W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has decreased by a whole dollar, those amounts will be decreased by $1.00. *See* comment 52(b)(1)(ii)–2. The adjustment to the permissible fee thresholds being adopted here reflects a 2 percent increase in the CPI–W from April 2013 to April 2014 and is rounded to the nearest $1 increment.

B. HOEPA Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia,* section 1431 of the Dodd-Frank Act, which revised the loan amount threshold for HOEPA loans. 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule). The 2013 HOEPA Final Rule adjusted the dollar amount threshold used in connection with calculating whether a transaction meets the percentage point thresholds in the points and fees coverage test to $20,000. Specifically, under § 1026.32(a)(1)(ii)(A) and (B), when determining whether a transaction is a high cost mortgage, the determination of the applicable points and fees coverage test is based upon whether the total loan amount is for more or less than $20,000. The HOEPA 2013 Final Rule provides that this threshold amount be recalculated annually and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI–U) index, as published by the BLS, as the index for adjusting the $20,000 figure. The CPI–U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI–U index reported by BLS on May 15, 2014, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2013 to April 2014. The adjustment to the $20,000 figure being adopted here reflects a 2 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

Pursuant to section 1431 of the Dodd Frank Act and § 1026.32(a)(1)(ii)(B) as amended by the 2013 HOEPA Final Rule, implementation of the 2013 HOEPA Final Rule also changed the HOEPA fee trigger to $1,000. The HOEPA 2013 Final Rule provides that this threshold amount will be recalculated annually and the Bureau uses the CPI–U index, as published by the BLS, as the index for adjusting the $1,000 figure. The adjustment to the CPI–U index reported by BLS on May 15, 2014, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2013 to April 2014. The adjustment to the $1,000 figure being adopted here reflects a 2 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

C. Ability To Repay and Qualified Mortgages Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia,* sections 1411 and 1412 of the Dodd-Frank Act, which implemented laws requiring mortgage lenders to consider a consumer's ability to repay home loans before extending them credit. 78 FR 6407 (Jan. 31, 2013) (2013 ATR/QM Final Rule). The 2013 ATR/QM Final Rule established the points and fees limits that a loan must not exceed in order to satisfy the requirements for a qualified mortgage. Specifically, a covered transaction is not a qualified mortgage unless the transactions points and fees do not exceed 3 percent of the total loan amount for a loan amount greater than or equal to $100,000; $3,000 for a loan amount greater than or equal to $60,000 but less than $100,000; 5 percent of the total loan amount for loans greater than or equal to $20,000 but less than $60,000; $1,000 for a loan amount greater than or equal to $12,500 but less than $20,000; and 8 percent of the total loan amount for loans less than $12,500. The 2013 ATR/QM Final Rule provides that the limits and loan amounts in 1026.43(e)(3)(i) be recalculated annually for inflation and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI–U) index, as published by the BLS, as the index for adjusting the figures. The CPI–U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI–U index reported by BLS on May 15, 2014, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2013 to April 2014. The adjustment to the figures being adopted here reflects a 2 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

A. CARD Act Annual Adjustments

Minimum Interest Charge Disclosure Thresholds—§§ 1026.6(b)(2)(iii) and 1026.60(b)(3)

The minimum interest charge amounts for §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) will remain unchanged for the year 2015. Accordingly, the Bureau is not amending these sections.

Penalty Fees Safe Harbor—§ 1026.52(b)(1)(ii)(A) and (B)

Effective January 1, 2015, the permissible fee threshold amounts are $27 for § 1026.52(b)(1)(ii)(A) and $38 for § 1026.52(b)(1)(ii)(B). Accordingly, the Bureau is revising § 1026.52(b)(1)(ii)(A) and (B) to state that the fee imposed for violating the terms or other requirements of an account shall not exceed $27 and $38 respectively. The Bureau is also amending comment 52(b)(1)(ii)–2.i to preserve a list of the historical thresholds for this provision.

B. HOEPA Annual Threshold Adjustment—Comments 32(a)(1)(ii)–1 and –3

Effective January 1, 2015, for purposes of determining the total loan amount threshold that determines whether a transaction is a high cost mortgage when the points and fees are either 5 percent or 8 percent [2] is $20,391. Comment 32(a)(1)(ii)–3, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2015.

Effective January 1, 2015, for purposes of determining whether a consumer credit transaction that is secured by a consumer's principal dwelling and is not otherwise exempt is covered by § 1026.32 (based on the total points and fees payable by the consumer at consummation), a loan is covered if the points and fees exceed $1,020 or 8 percent of the total loan amount, whichever is lower. Comment 32(a)(1)(ii)–1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2015.

C. Ability To Repay and Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2015, for purposes of determining whether a covered transaction is a qualified mortgage, a

[2] Or $1,020, whichever is lesser. See the adjustment of the amount below for additional discussion.

covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed 3 percent of the total loan amount for a loan amount greater than or equal to $101,953; $3,059 for a loan amount greater than or equal to $61,172 but less than $101,953; 5 percent of the total loan amount for loans greater than or equal to $20,391 but less than $61,172; $1,020 for a loan amount greater than or equal to $12,744 but less than $20,391, and 8 percent of the total loan amount for loans less than $12,744. Comment 43(e)(3)(ii)–1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amounts for 2015.

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule in Regulation Z, § 1026.52(b)(1)(ii)(A) and (B) in subpart E is amended and comments 1026.32(a)(1)(ii)–3.i, 1026.43(e)(3)(ii)–1.i, 1026.52(b)(1)(ii)–2.i.b in supplement I are added to update the exemption thresholds. The amendments in this final rule are technical and non-discretionary, and they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the Bureau reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

■ 2. In § 1026.52, paragraphs (b)(1)(ii)(A) and (B) are revised to read as follows:

§ 1026.52 Limitations on fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) $27

(B) $38 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

* * * * *

■ 3. In Supplement I to part 1026—Official Interpretations:

■ A. Under subpart E, *Section 1026.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage, Paragraph 32(a)(1)(ii),* paragraphs 1.i and 3.i are added.

■ B. Under subpart E, *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling, 43(e) Qualified Mortgages, Paragraph 43(e)(3)(ii),* paragraph 1.i is added.

■ C. Under subpart G, *Section 1026.52—Limitations on Fees, 52(b) Limitations on Penalty Fees,* 52*(b)(1)(ii) Safe Harbors, subheading i,* paragraph 2.i.B is added.

The additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.32—Requirements for High-Cost Mortgages

32(a) Coverage.

Paragraph 32(a)(1)(ii).

1. * * *

i. For 2015, $1,020, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

* * * * *

3. * * *

i. For 2015, $20,391, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(e)(3) Limits on Points and Fees for Qualified Mortgages

* * * * *

Paragraph 43(e)(3)(ii)

1. * * *

i. For 2015, reflecting a 2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to $101,953: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,172 but less than $101,953: $3,059;

C. For a loan amount greater than or equal to $20,391 but less than $61,172: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,744 but less than $20,391; $1,020;

E. For a loan amount less than $12,744: 8 percent of the total loan amount.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Section 1026.52—Limitations on Fees

* * * * *

52(b)(1)(ii) Safe harbors

* * * * *

2. * * *

i. * * *

B. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $26 under § 1026.52(b)(1)(ii)(A) and $37 under § 1026.52(b)(1)(ii)(B), through December 31, 2014.

* * * * *

Dated: July 29, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–18838 Filed 8–14–14; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0531; Directorate Identifier 2014–NM–142–AD; Amendment 39–17940; AD 2014–16–16]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This AD requires, for certain airplanes, retorquing and replacing the pylon outboard and inboard lower link fittings. For all airplanes, this AD requires repetitive retorquing of the pylon outboard and inboard lower link fittings. This AD was prompted by a report of a loose lower link assembly on the left and right pylons. We are issuing this AD to prevent loss of a shear pin on the pylon outboard and inboard lower link fittings, which could result in failure of the fitting and consequent separation of the engine from the wing.

DATES: This AD becomes effective September 2, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 2, 2014.

We must receive comments on this AD by September 29, 2014.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* 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 Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brazil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.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–2014–0531; 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: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2180; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2014–07–01, dated July 10, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. The MCAI states:

> It has been found that repetitive tightening torque check required by EAD 2014–06–02—EMBRAER S.A./39–1383 may not be sufficient to prevent the lower inboard and outboard link fitting attaching parts, of the left hand (LH) and right hand (RH) pylon, from getting loose which could lead to the failure of one of those fittings and the consequent separation of the engine from the wing.

Required actions include retorquing and replacing the pylon outboard and inboard lower link fittings on certain airplanes, and repetitively retorquing the pylon outboard and inboard lower link fittings on all airplanes. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0531.

Relevant Service Information

Embraer has issued the following service information:

- Embraer Alert Service Bulletin 190–54–A015, Revision 03, dated June 27, 2014.
- Embraer Alert Service Bulletin 190LIN–54–A006, Revision 02, dated June 27, 2014.
- Embraer Service Bulletin 190–54–0013, dated November 27, 2012.
- Embraer Service Bulletin 190–54–0015, dated July 3, 2014.
- Embraer Service Bulletin 190LIN–54–0004, dated December 20, 2012.
- Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014.

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.

Difference Between This AD and the MCAI or Service Information

The applicability of the MCAI does not include production airplanes. This FAA AD, however, applies to all airplanes of the affected models to ensure that the repetitive retorquing is done on the fleet (as specified in paragraph (i) of this AD) and to prohibit the installation of certain lock nuts on any airplane in the fleet (as specified in paragraph (j) of this AD).

The airplanes affected by paragraph (g)(2) of this AD include one airplane (serial number 19000641) that is not included in the corresponding requirement of the ANAC AD. For the airplanes affected by this requirement, the ANAC AD refers to Embraer Alert Service Bulletin 190LIN–54–A006, Revision 02, dated June 27, 2014. This FAA AD, however, refers to the most recent service information—Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014, which includes this

additional airplane. This has been coordinated with ANAC.

"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.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase "its delegated agent" to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: "The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin."

This comment has made the FAA 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 actions must be accomplished using a method approved by the FAA, ANAC, or ANAC's authorized Designee.

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

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

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 loss of a shear pin on the pylon outboard and inboard lower link fittings could result in failure of the fitting and consequent separation of the engine from the wing. 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 less 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–2014–0531; Directorate Identifier 2014–NM–142–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 86 airplanes of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. Required parts will cost about $0. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $43,860, or $510 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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):

2014–16–16 Embraer S.A.: Amendment 39–17940. Docket No. FAA–2014–0531; Directorate Identifier 2014–NM–142–AD.

(a) Effective Date

This AD becomes effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Reason

This AD was prompted by a report of a loose lower link assembly on the left and right pylons. We are issuing this AD to prevent loss of a shear pin on the pylon outboard and inboard lower link fittings, which could result in failure of the fitting and consequent separation of the engine from the wing.

(f) Compliance

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

(g) Initial Retorque

Retorque the left and right pylon outboard and inboard lower link fittings, as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190–54–0015, dated July 3, 2014: Retorque at the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 190–54–A015, Revision 03, dated June 27, 2014.

(i) For Group 1 airplanes: Retorque at the applicable time specified in paragraph (g)(1)(i)(A) or (g)(1)(i)(B) of this AD.

(A) If, as of the effective date of this AD, the airplane has accumulated fewer than 600 total flight cycles and less than 750 total flight hours since accomplishment of the actions specified in Embraer Service Bulletin 190–54–0013: Retorque within 50 flight hours after the effective date of this AD.

(B) If, as of the effective date of this AD, the airplane has accumulated 600 or more total flight cycles or 750 or more total flight hours after accomplishment of Embraer Service Bulletin 190–54–0013: Retorque within 10 flight hours after the effective date of this AD.

(ii) For Group 2 airplanes: Retorque at the applicable time specified in paragraph (g)(1)(ii)(A) or (g)(1)(ii)(B) of this AD.

(A) If, as of the effective date of this AD, the airplane has accumulated fewer than 600 total flight cycles and less than 750 total flight hours: Retorque within 50 flight hours after the effective date of this AD.

(B) If, as of the effective date of this AD, the airplane has accumulated 600 or more total flight cycles or 750 or more total flight hours: Retorque within 10 flight hours after the effective date of this AD.

(2) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014: Retorque at the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 190LIN–54–A006, Revision 02, dated June 27, 2014.

(i) For Group 1 airplanes: Retorque at the applicable time specified in paragraph (g)(2)(i)(A) or (g)(2)(i)(B) of this AD.

(A) If, as of the effective date of this AD, the airplane has accumulated fewer than 200 total flight cycles and less than 750 total flight hours since accomplishment of the actions specified in Embraer Service Bulletin 190LIN–54–0004: Retorque within 50 flight hours after the effective date of this AD.

(B) If, as of the effective date of this AD, the airplane has accumulated 200 or more total flight cycles or 750 or more total flight hours since accomplishment of the actions specified in Embraer Service Bulletin 190LIN–54–0004: Retorque within 10 flight hours after the effective date of this AD.

(ii) For Group 2 airplanes: Retorque at the applicable time specified in (g)(2)(ii)(A) or (g)(2)(ii)(B) of this AD.

(A) If, as of the effective date of this AD, the airplane has accumulated fewer than 200 total flight cycles and less than 750 total flight hours: Retorque within 50 flight hours after the effective date of this AD.

(B) If, as of the effective date of this AD, the airplane has accumulated 200 or more total flight cycles or 750 or more total flight hours: Retorque within 10 flight hours after the effective date of this AD.

(h) Replacement

Replace the left and right pylon outboard and inboard lower link fittings as specified in paragraph (h)(1) or (h)(2), as applicable.

(1) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190–54–0015, dated July 3, 2014: Within 150 flight cycles or 200 flight hours, whichever occurs first after the effective date of this AD, replace the pylon outboard and inboard lower link fittings, in accordance with Parts I and II of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0015, dated July 3, 2014.

(2) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014: Within 60 flight cycles or 200 flight hours, whichever occurs first after the effective date of this AD, replace the pylon outboard and inboard lower link fittings, in accordance with Parts I and II of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014.

(i) Repetitive Retorquing

Retorque the left and right pylon outboard and inboard lower link fittings, as specified in paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) For Model ERJ 190–100 STD, &100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes: Retorque as specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable, in accordance with Parts III and IV of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0015, dated July 3, 2014.

(i) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190–54–0015,

dated July 3, 2014: Retorque within 6,000 flight cycles or 7,500 flight hours, whichever occurs first after replacement of the pylon outboard and inboard lower link fittings required by paragraph (h) of this AD, and thereafter at intervals not to exceed 6,000 flight cycles or 7,500 flight hours, whichever occurs first.

(ii) For airplanes identified as Group 3 in Embraer Service Bulletin 190–54–0015, dated July 3, 2014, and Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes having serial numbers 19000586 and subsequent: Retorque within 6,000 flight cycles or 7,500 flight hours, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 6,000 flight cycles or 7,500 flight hours, whichever occurs first.

(2) For Model ERJ 190–100 ECJ airplanes: Retorque as specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD, as applicable, in accordance with Parts III and IV of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014.

(i) For airplanes identified as Groups 1 and 2 in Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014: Retorque within 2,000 flight cycles or 7,500 flight hours, whichever occurs first after replacement of the pylon outboard and inboard lower link fittings required by paragraph (h) of this AD, and thereafter at intervals not to exceed 2,000 flight cycles or 7,500 flight hours, whichever occurs first.

(ii) For airplanes identified as Group 3 in Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014, and Model ECJ airplanes having serial numbers 19000572 and subsequent: Retorque within 2,000 flight cycles or 7,500 flight hours, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 2,000 flight cycles or 7,500 flight hours, whichever occurs first.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install, at the inboard or outboard lower link fitting on any airplane, a lock assembly identified in Embraer Service Bulletin 190–54–0013, dated November 27, 2012; or Embraer Service Bulletin 190LIN–54–0004, dated December 20, 2012.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (k)(1) through (k)(5) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(1) Embraer Alert Service Bulletin 190–54–A015, dated June 23, 2014.

(2) Embraer Alert Service Bulletin 190–54–A015, Revision 01, dated June 26, 2014.

(3) Embraer Alert Service Bulletin 190–54–A015, Revision 02, dated June 27, 2014.

(4) Embraer Alert Service Bulletin 190LIN–54–A006, dated June 23, 2014.

(5) Embraer Alert Service Bulletin 190LIN–54–A006, Revision 01, dated June 26, 2014.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA; telephone 425–227–2180; fax 425–227–1149. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2014–07–01, dated July 10, 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–2014–0531.

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

(n) Material Incorporated by Reference

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

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

(i) Embraer Alert Service Bulletin 190–54–A015, Revision 03, dated June 27, 2014.

(ii) Embraer Alert Service Bulletin 190LIN–54–A006, Revision 02, dated June 27, 2014.

(iii) Embraer Service Bulletin 190–54–0013, dated November 27, 2012.

(iv) Embraer Service Bulletin 190–54–0015, dated July 3, 2014.

(v) Embraer Service Bulletin 190LIN–54–0004, dated December 20, 2012.

(vi) Embraer Service Bulletin 190LIN–54–0006, dated July 3, 2014.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.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 August 6, 2014.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–19263 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0121; Directorate Identifier 2013–NM–151–AD; Amendment 39–17928; AD 2014–16–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2008–14–17 for certain Airbus Model A330–200 and A340–300 series airplanes. AD 2008–14–17 required a high frequency eddy current (HFEC) inspection, corrective actions if necessary, and modifications. This new AD requires the same actions as those required by AD 2008–14–17, but with a reduced compliance time. This AD was prompted by a determination from a fatigue and damage tolerance evaluation that the compliance time needs to be revised. We are issuing this AD to detect and correct damage of the upper shell structure at the skin and frame interface, which could result in reduced structural integrity of the airframe.

DATES: This AD becomes effective September 19, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2014.

The Director of the Federal Register approved the incorporation by reference

of certain other publications listed in this AD as of August 21, 2008 (73 FR 40958, July 17, 2008).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0121;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008). AD 2008–14–17 applied to certain Airbus Model A330–200 and A340–300 series airplanes. The NPRM published in the **Federal Register** on March 3, 2014 (79 FR 11717).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0158, dated July 22, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 and A340–300 series airplanes. The MCAI states:

During fatigue tests (EF3) on an A340–600 aeroplane, multiple damage was found in the upper side shell structure at skin and frame (FR) 84 and 85 interface, from stringer 6 to 15 Left-Hand (LH) and Right Hand (RH). This damage occurred between 58 341 and 72 891 simulated flight cycles (FC).

Due to the higher Design Service Goal and different design (e.g. skin thickness) for A330–200 and A340–300 aeroplanes, the damage assessment concluded that these aeroplanes can potentially be impacted.

This condition, if not detected and corrected, could result in reduced structural integrity of the airframe.

Prompted by these findings, EASA issued [an] AD * * * to require a one-time inspection and a modification to improve the upper shell structure.

EASA AD 2007–0269R1 [*http://ad.easa.europa.eu/blob/easa_ad_2007_0269R1_superseded.pdf/AD_2007-0269R1_2,* which corresponds to FAA AD 2008–14–17, Amendment 39–15612 (73 FR 40958)] was issued to clarify the fact that the [EASA] AD was not applicable to A340–300 aeroplanes on which both Airbus Mod 44205 and Mod 45012 have been embodied in production.

Since that [EASA] AD was issued, in the frame of a new fatigue and damage tolerance evaluation, taking into account the aeroplane utilization, the threshold and intervals were reassessed. This reassessment concluded that, in that specific case, the threshold for modifying the aeroplane must be reduced.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2007–0269R1, which is superseded, but requires these actions within the new thresholds.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0121-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 11717, March 3, 2014) or on the determination of the cost to the public.

''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 actions must be accomplished using a method approved by the FAA, EASA, or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA 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 ''design approval holder (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 throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR

11717, March 3, 2014) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 11717, March 3, 2014).

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

Costs of Compliance

We estimate that this AD affects 7 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Modification [retained actions from. AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008)].	300 work-hours × $85 per hour = $25,500	$72,730	$98,230	$687,610

The new requirements of this AD add no additional economic burden.

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2014–0121;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008), and adding the following new AD:

2014–16–04 Airbus: Amendment 39–17928. Docket No. FAA–2014–0121; Directorate Identifier 2013–NM–151–AD.

(a) Effective Date

This AD becomes effective September 19, 2014.

(b) Affected ADs

This AD replaces AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008).

(c) Applicability

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

(1) Airbus Model A330–201, –202, –203, –223, and –243 airplanes, all manufacturer serial numbers (MSNs), on which Airbus Modification 44205 has been embodied in production, except those on which Airbus Modification 52974 or Modification 53223 has been embodied in production.

(2) Airbus Model A340–311, –312, and –313 airplanes, all MSNs on which Airbus Modification 44205 has been embodied in production, except those on which Airbus Modification 52974, Modification 53223, or Modification 45012 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a determination from a fatigue and damage tolerance evaluation that the compliance time of the high frequency eddy current (HFEC) inspection for cracking, and modification of the upper shell structure of the fuselage needs to be revised. We are issuing this AD to detect and correct damage of the upper shell structure at the skin and frame interface, which could result in reduced structural integrity of the airframe.

(f) Compliance

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

(g) Retained Inspection

This paragraph restates the requirements of paragraph (f)(1) of AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008), with reduced compliance times and revised service information. For Airbus Model A330–200 series airplanes, as identified in paragraph (c) of this AD, on which Modification 45012 has been embodied in production: Within the applicable compliance times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, do the HFEC inspection for cracking, and corrective actions as applicable; and modify the upper shell structure of the fuselage; in accordance with the

Accomplishment Instructions of Airbus Service Bulletin A330–53–3152, Revision 3, dated December 22, 2011. Do all applicable corrective actions before further flight.

(1) For airplanes pre-modification 48827 with short range utilization: At the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Prior to 24,400 total flight cycles or 85,400 total flight hours, whichever occurs first.

(ii) Within 12 months after the effective date of this AD without exceeding 25,400 total flight cycles.

(2) For airplanes pre-modification 48827 with long range utilization: At the later of the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Prior to 18,900 total flight cycles or 122,900 total flight hours, whichever occurs first.

(ii) Within 12 months after the effective date of this AD without exceeding 25,400 total flight cycles.

(3) For airplanes post-modification 48827 with short range utilization: At the later of the times specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD.

(i) Prior to 16,400 total flight cycles or 57,400 total flight hours, whichever occurs first.

(ii) Within 12 months after the effective date of this AD without exceeding 17,100 total flight cycles or 94,700 total flight hours, whichever occurs first.

(4) For airplanes post-modification 48827 with long range utilization: At the later of the times specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD.

(i) Prior to 12,700 total flight cycles or 82,700 total flight hours, whichever occurs first.

(ii) Within 12 months after the effective date of this AD without exceeding 17,100 total flight cycles or 94,700 total flight hours, whichever occurs first.

(h) Retained Modification

This paragraph restates the requirements of paragraph (f)(2) of AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008), with revised paragraph formatting. For Airbus Model A330–200 and A340–300 series airplanes as identified in paragraph (c) of this AD, on which Modification 45012 has not been embodied in production: At the later of the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, modify the upper shell structure of the fuselage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3157, or Airbus Service Bulletin A340–53–4163, both dated July 5, 2006, as applicable.

(1) For the airplanes identified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) For Model A330–200 series airplanes, prior to 6,600 total flight cycles.

(ii) For Model A340–300 series airplanes, prior to 14,000 total flight cycles.

(2) Within 90 days after August 21, 2008 (the effective date of AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008)).

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) Airbus Service Bulletin A330–53–3152, dated April 10, 2007, which was incorporated by reference in AD 2008–14–17, Amendment 39–15612 (73 FR 40958, July 17, 2008).

(2) Airbus Service Bulletin A330–53–3152, Revision 1, dated May 5, 2009, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A330–53–3152, Revision 2, dated July 27, 2011, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0158, dated July 22, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0121-0002.*

(2) Service information identified in this AD that is not incorporated by reference in this AD is available at the addresses specified in paragraphs (l)(5) and (l)(6) of this AD.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 19, 2014.

(i) Airbus Service Bulletin A330–53–3152, Revision 3, dated December 22, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on August 21, 2008 (73 FR 40958, July 17, 2008).

(i) Airbus Service Bulletin A330–53–3157, dated July 5, 2006.

(ii) Airbus Service Bulletin A340–53–4163, dated July 5, 2006.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(6) 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.

(7) 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 23, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18461 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0468; Directorate Identifier 2012–NM–147–AD; Amendment 39–17924; AD 2014–15–21]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2006–26–06 for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce engines. AD 2006–26–06 required repetitive inspections to detect cracks of the outer V-blades of the thrust reverser, and corrective action if necessary. AD

2006–26–06 also provided for an optional terminating action for the repetitive inspections. This new AD adds, for airplanes on which the optional terminating action is done, repetitive inspections for cracking in the outer V-blade fittings of the hinge beam and latch beam ends of each thrust reverser half, and replacement of an affected thrust reverser half if necessary. This new AD also adds airplanes to the applicability. This AD was prompted by reports of cracked outer V-blade fittings at the hinge beam end of Rolls-Royce engine thrust reversers, on airplanes on which the optional terminating action was done. We are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in unexpected thrust asymmetry and a possible runway excursion.

DATES: This AD is effective September 19, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 19, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 11, 2007 (71 FR 77586, December 27, 2006).

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Narinder Luthra, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6513; fax: 425–917–6590; email: *narinder.luthra@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006). AD 2006–26–06 applied to Boeing Model 777–200 and –300 series airplanes, equipped with Rolls-Royce engines. The NPRM published in the **Federal Register** on July 3, 2013 (78 FR 40060). The NPRM proposed to continue to require repetitive inspections to detect cracks of the outer V-blades of the thrust reverser, and corrective action if necessary. The NPRM also proposed to continue to provide an optional terminating action for the repetitive inspections. The NPRM also proposed to require, for airplanes on which the optional terminating action is done, repetitive inspections for cracking in the outer V-blade fittings of the hinge beam and latch beam ends of each thrust reverser half, and replacement of an affected thrust reverser half if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 40060, July 3, 2013) and the FAA's response to each comment.

Requests To Incorporate Boeing Special Attention Service Bulletin 777–78–0091, Dated June 18, 2013

Boeing, American Airlines (AAL), Air New Zealand, Delta Airlines, and Transaero requested that we allow the modifications and inspections defined in Boeing Special Attention Service Bulletin 777–78–0091, dated June 18, 2013, as an alternative to the inspections specified in paragraph (j) of the NPRM (78 FR 40060, July 3, 2013). Boeing stated that Boeing Special Attention Service Bulletin 777–78–0091, dated June 18, 2013, has been approved as an alternative method of compliance (AMOC) with AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), and is intended as an alternative to the inspections proposed by the NPRM. Boeing also requested that we provide credit for actions specified in paragraph (j) of the NPRM that were done before the effective date of the new AD in accordance with Boeing Special Attention Service Bulletin 777–78–0091, dated June 18, 2013.

We disagree with the request. Boeing is considering revising Boeing Special Attention Service Bulletin 777–78–0091, dated June 18, 2013, to incorporate feedback on the Accomplishment Instructions of the service bulletin that resulted from validation of the service bulletin. The new revision might include improvements to the L-fitting modification to eliminate short edge margin, fastener changes to eliminate interference, and other changes to the installation sequence and other procedures. We will consider approving the revision of Boeing Special Attention Service Bulletin 777–78–0091 as an AMOC to the actions specified in paragraph (j) of this AD, once this service bulletin is approved and is released. We find that delaying this action would be inappropriate in light of the urgency of the identified unsafe condition. No change has been made to this final rule in this regard.

Request To Reference Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, Dated June 14, 2012

Boeing requested that we add Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, as a reference to paragraph (g) of the NPRM (78 FR 40060, July 3, 2013). Boeing stated that Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, reiterates the repetitive inspection intervals from Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006.

We agree. The compliance times specified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; and Revision 2, dated June 14, 2012; are the same, except that Revision 2 states that the compliance times are measured from the effective date of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), rather than the issue date of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006. We have revised paragraph (g) of this final rule to add Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, as a reference for accomplishing the actions.

Request To Change Format of the NPRM (78 FR 40060, July 3, 2013)

Air New Zealand requested that we change the format of the NPRM (78 FR 40060, July 3, 2013) to clarify the requirements. The commenter requested that we list all repetitive inspection

requirements for all airplane configurations in one paragraph. The commenter stated that the format of the NPRM was confusing.

We disagree with changing the format as it is consistent with the format used for most supersedure ADs. Paragraph (g) of this AD clearly identifies the affected airplanes that must continue to accomplish the retained repetitive inspections. Paragraph (j) of this AD clearly identifies the affected airplanes that must accomplish the new repetitive inspections. No change has been made to this final rule in this regard.

Request To Consider AD Implementation Aviation Rulemaking Committee (AD ARC) Recommendations

AAL requested that, in the spirit of the AD ARC to improve the AD process, we consider the guidance from the AD ARC when considering its comments to the proposed AD. AAL provided a general comment noting that certain service information referenced in the proposed AD is quite lengthy and contains extremely detailed data, while one of the referenced service documents is only 29 pages long. AAL does not consider the lengthy service information to be ''AD-Friendly.'' Further, AAL stated that the instructions in this service information does not differentiate between critical and non-critical tasks and figures (i.e., the service information does not incorporate the ''Required for Compliance'' (RC) concept developed by the AD ARC).

We agree that it is helpful when service information is presented in a way that meets ''AD-Friendly'' guidelines. The focus of AD-friendly service information is to ensure that the language (including compliance times and instructions) in the document is clear and legally enforceable and, therefore, easier for the FAA to adopt into an AD. However, this focus does not mean the service information will be brief. Many service bulletins are necessarily lengthy and complex due, in part, to multiple actions, multiple airplane groups/configurations, and multiple or complex compliance times.

The RC concept is an additional improvement to service information. The concept was developed between the FAA and industry under the AD ARC to further enhance service bulletins and, in turn, the AD process. The RC concept is a new process for annotating which steps in the service information are ''required for compliance'' with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of AD requirements and help provide consistent judgment in AD compliance. However, the RC concept does not necessarily result in less lengthy service information. Details might be necessary to provide clear understanding and accurate service instructions.

In response to the AD ARC's recommendations, the FAA released Advisory Circular (AC) 20–176, dated December 19, 2011 (*http://rgl.avs.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/a78cc91a47b192278625796b0075f419/$FILE/AC%2020-176.pdf*); and Order 8110.117, dated September 12, 2012 (*http://rgl.avs.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/984bb9eb07cdd86986257a7f0070744c/$FILE/Order%208110.117.pdf*); which discusses the RC concept. The FAA includes this concept in ADs when we receive service information containing RC steps. While some design approval holders have implemented the RC concept, the implementation is voluntary. The FAA does not intend to develop or revise AD requirements to incorporate the RC concept if it is not included in the service information.

Request To Add More Detail for Compliance Requirements in AD

AAL requested that rather than requiring compliance with the referenced service bulletins, the AD should focus compliance requirements on identifying detailed inspections by task name, identifying an optional configuration change by part numbers, and specifying the corrective action for crack findings. AAL stated that requiring compliance with the entirety of the referenced service bulletins would introduce an unnecessary and excessive burden on the operators, impede progress toward correcting the unsafe condition, and introduce unintended compliance risks not relevant to correcting the unsafe condition.

We disagree with the request. As stated previously, the FAA does not intend to develop or revise AD requirements to incorporate the RC concept if it is not included in the service information. This final rule requires certain repetitive inspections and, as applicable, certain corrective actions and replacements, which are described in detail in the service information. No change has been made to this final rule in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 40060, July 3, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 40060, July 3, 2013).

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

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects 55 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Inspections [retained actions from AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006)].	16 work-hours × $85 per hour = $1,360 per inspection cycle.	$1,360 per inspection cycle	$74,800 per inspection cycle.
Repetitive inspections outer V-blade [new action] [1]	82 work-hours × $85 per hour = $6,970 per inspection cycle.	$6,970 per inspection cycle	$383,350 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), and adding the following new AD:

2014–15–21 The Boeing Company: Amendment 39–17924; Docket No. FAA–2013–0468; Directorate Identifier 2012–NM–147–AD.

(a) Effective Date

This AD is effective September 19, 2014.

(b) Affected ADs

This AD supersedes AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Unsafe Condition

This AD was prompted by reports of cracked outer V-blade fittings at the hinge beam end of Rolls-Royce engine thrust reversers, on airplanes on which the optional terminating action was done. We are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in unexpected thrust asymmetry and a possible runway excursion.

(f) Compliance

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

(g) Retained Repetitive Inspections With New Service Information

This paragraph restates the requirements of paragraph (f) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), with new service information. For Group 1, Configuration 1, airplanes, as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012: Do the detailed inspections to detect cracks in the outer V-blade of the thrust reversers. Do the inspections in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; or Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012. Do the inspections at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; except where Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006, specifies an initial compliance time after the date on that service bulletin, this AD requires compliance within the specified time after January 11, 2007 (the effective date of AD 2006–26–06). Do applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; or Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012; or paragraph (m) of this AD. As of the effective date of this AD, use only Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, to accomplish the actions required by this paragraph.

(h) Retained Credit for Previous Actions

This paragraph restates the credit provisions for the actions specified in paragraph (g) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006). For Group 1, Configuration 1, airplanes as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012. This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before January 11, 2007 (the effective date of AD 2006–26–06), using Boeing Special Attention Service Bulletin 777–78–0064, dated August 7, 2006.

(i) Retained Optional Terminating Action With New Requirements and New Service Information

This paragraph restates the optional terminating action specified in paragraph (i) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), with new service information. Accomplishment of the actions specified in paragraph (i)(1) or (i)(2) of this AD terminates the requirements of paragraph (g) of this AD. For airplanes on which this terminating action has been accomplished, operators must do the inspection required by paragraph (j) of this AD.

(1) Accomplishment of the applicable inspections and related investigative/corrective actions before the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006; except, where Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006, specifies to contact the manufacturer for appropriate action, repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) Accomplishment of the applicable modification, inspections, and related investigative/corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0061, Revision 1, dated August 28, 2007; except, where Boeing Special Attention Service Bulletin 777–78–0061, Revision 1, dated August 28, 2007, specifies to contact the manufacturer for appropriate action, repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(j) New Repetitive Inspections

For airplanes in Group 1, Configuration 2, and Groups 2 and 3, as identified in Boeing Special Attention Service Bulletin 777–78–

0064, Revision 2, dated June 14, 2012: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, except as provided by paragraph (k) of this AD, do a detailed inspection for cracking of the outer V-blade fittings at the latch beam end and hinge beam end of each thrust reverser half, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(1) If no cracking is found, repeat the inspections thereafter at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(2) If any cracking is found, before further flight, replace the affected thrust reverser half with a serviceable thrust reverser half, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012. Repeat the inspections thereafter at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(k) Service Information Exception

Where Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, specifies an initial compliance time ''after the date on Revision 2 of this service bulletin,'' this AD requires compliance within the specified time after the effective date of this AD.

(l) Reporting Not Required

Although Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(m) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), are not approved as AMOCs for this AD.

(n) Related Information

(1) For more information about this AD, contact Narinder Luthra, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6513; fax: 425–917–6590; email: *narinder.luthra@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (o)(5) and (o)(6) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 19, 2014.

(i) Boeing Special Attention Service Bulletin 777–78–0061, Revision 1, dated August 28, 2007.

(ii) Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(4) The following service information was approved for IBR on January 11, 2007 (71 FR 77586, December 27, 2006).

(i) Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

(7) 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 23, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18313 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0219; Directorate Identifier 2014–NE–04–AD; Amendment 39–17939; AD 2014–16–15]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Turbomeca S.A. Makila 2A and Makila 2A1 turboshaft engines. This AD requires initial and repetitive visual inspections, and replacement of the splines of the high-pressure (HP) fuel pump/metering valve and the module M01 drive gear, if necessary. This AD was prompted by the failure of two HP fuel pumps that resulted in engine in-flight shutdowns. We are issuing this AD to prevent failure of the HP fuel pump, which could lead to an in-flight shutdown, damage to the engine, and forced landing or accident.

DATES: This AD becomes effective September 19, 2014.

ADDRESSES: For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2014–0219; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Katheryn Malatek, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Katheryn.malatek@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on May 12, 2014 (79 FR 26905). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Two uncommanded in-flight shutdowns on Makila 2A/2A1 engines have been reported. The results of the technical investigations concluded that these events were caused by deterioration of the splines on the high-pressure (HP) fuel pump drive link, which eventually interrupted the fuel supply to the engine.
>
> This condition, if not detected and corrected, could lead to further cases of uncommanded engine in-flight shutdown, and may ultimately lead to an emergency landing.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 26905, May 12, 2014).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD affects 8 engines installed on helicopters of U.S. registry. We also estimate that it will take about 2 hours per engine to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $750 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,360.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–16–15 Turbomeca S.A.: Amendment 39–17939; Docket No. FAA–2014–0219; Directorate Identifier 2014–NE–04–AD.

(a) Effective Date

This AD becomes effective September 19, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. Makila 2A and Makila 2A1 turboshaft engines with a high-pressure (HP) fuel pump, part number (P/N) 0 298 91 806 0 or P/N 0 298 91 805 0, installed, that have not incorporated Turbomeca modification TU 59.

(d) Reason

This AD was prompted by the failure of two HP fuel pumps that resulted in engine in-flight shutdowns. We are issuing this AD to prevent failure of the HP fuel pump, which could lead to an in-flight shutdown, damage to the engine, and forced landing or accident.

(e) Actions and Compliance

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

(1) Within 25 flight hours (FHs) or 6 months after the effective date of this AD, whichever occurs earlier, clean and visually inspect the splines of the HP fuel pump/metering valve and the module M01 drive gear for wear, corrosion, scaling, pitting, and chafing.

(2) Thereafter, reinspect every 100 FHs since-last-inspection.

(3) If the HP fuel pump/metering valve or the module M01 drive gear fails the inspection required by this AD, replace it with a part eligible for installation before further flight.

(4) After the effective date of this AD, do not install any HP fuel pump, HP fuel pump drive shaft, module M01 drive gear, or module M01 77-tooth gear onto any engine, or install any engine onto any helicopter, unless the HP fuel pump/metering valve and the module M01 drive gear passed the inspection required by paragraph (e) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact Katheryn Malatek, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Katheryn.malatek@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency (EASA) AD 2014–0059, dated March 10, 2014, and EASA AD 2014–0059R1, dated April 15, 2014, for more information. You may examine the MCAIs in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0219-0003.*

(3) Turbomeca S.A. Mandatory Service Bulletin No. 298 73 2818, Version F, dated March 5, 2014, which is not incorporated by reference in this AD, can be obtained from Turbomeca S.A., using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

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

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on August 6, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–19228 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1068; Directorate Identifier 2013–NM–196–AD; Amendment 39–17923; AD 2014–15–20]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of failure of the high pressure shutoff valves (HPSOVs) causing the timer and monitor unit (TMU) to become inoperative since the HPSOV and the TMU are on the same circuit breaker. This AD requires a wiring modification to segregate the HPSOV power supply from the TMU. We are issuing this AD to prevent an inoperative TMU, which could result in the loss of the automatic de-icing mode, and lead to an increased workload for the flight crew and loss of control of the airplane.

DATES: This AD becomes effective September 19, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-1068;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on January 2, 2014 (79 FR 76). Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–27, dated September 25, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several in-service reports of the failure of high pressure shutoff valves (HPSOV) causing the Timer and Monitor Unit (TMU) to become inoperative since the HPSOV and TMU are on the same circuit breaker.
>
> An inoperative TMU would result in the loss of the automatic de-icing mode and would lead to an increased workload for the flightcrew. In the case where additional failures occur during a critical flight phase, the significantly increased workload could lead to loss of control of the aeroplane.
>
> This [Canadian] AD mandates a wiring modification to segregate the HPSOV power supply from the TMU.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1068-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 76, January 2, 2014) and the FAA's response to the comment.

Request To Use the Latest Service Information

Horizon Air requested that we revise the proposed AD (79 FR 76, January 2, 2014) to allow compliance for Bombardier Service Bulletin 84–36–04, Revision B, dated January 2, 2014, or Bombardier Service Bulletin 84–36–04, Revision A, dated April 17, 2013.

We agree with the commenter's request to reference the latest service information. We have revised this AD by referencing Bombardier Service Bulletin 84–36–04, Revision B, dated January 2, 2014, throughout this AD. We have also revised paragraph (h) of this AD to give credit for actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 84–36–04, Revision A, dated April 17, 2013, as well as Bombardier Service Bulletin 84–36–04, dated March 13, 2013.

''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.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 76, January 2, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 76, January 2, 2014) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA 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 actions 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.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

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 throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 76, January 2, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 76, January 2, 2014).

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

Costs of Compliance

We estimate that this AD affects 78 airplanes of U.S. registry.

We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $46,410, or $595 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http:/www.regulations.gov#!docketDetail;D=FAA-2013-1068;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–20 Bombardier, Inc.: Amendment 39–17923. Docket No. FAA–2013–1068; Directorate Identifier 2013–NM–196–AD.

(a) Effective Date

This AD becomes effective September 19, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4446 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Reason

This AD was prompted by reports of failure of the high pressure shutoff valves (HPSOVs) causing the timer and monitor unit (TMU) to become inoperative since the HPSOV and the TMU are on the same circuit breaker. We are issuing this AD to prevent an inoperative TMU, which could result in the loss of the automatic de-icing mode, and lead to an increased workload for the flight crew and loss of control of the airplane.

(f) Compliance

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

(g) Segregation of the HPSOV Power Supply From the TMU

Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do a wiring modification to segregate the HPSOV power supply from the TMU, by incorporating Bombardier ModSum Package 4–110595, Revision C, dated May 14, 2013, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–36–04, Revision B, dated January 2, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–36–04, dated March 13, 2013; or Bombardier Service Bulletin 84–36–04, Revision A, dated April 17, 2013.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 New York 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 officecertificate 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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–27, dated September 25, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http:/www.regulations.gov#!documentDetail;D=FAA-2013-1068-0002.*

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

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–36–04, Revision B, dated January 2, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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.govfederal-registercfribr-locations.html.*

Issued in Renton, Washington, on July 18, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18306 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0368; Airspace Docket No. 13–AGL–26]

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Routes in the Vicinity of Nabb, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies four VOR Federal airways (V–44, V–47, V–49, and V–51) in the vicinity of Nabb, IN. The Nabb, IN (ABB), VHF Omnidirectional Range (VOR)/Tactical Air Navigation (VORTAC) facility that provides navigation guidance for a portion of the airways listed was damaged beyond repair by a tornado in 2012.

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 Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

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

SUPPLEMENTARY INFORMATION:

History

On March 2, 2012, the Nabb, IN (ABB), VHF Omni-directional Range (VOR)/Tactical Air Navigation (VORTAC) navigation aid (NAVAID) was damaged by a tornado. A Notice to Airmen (NOTAM) was published the following day documenting the ABB VORTAC being out of service and has remained published to present. The Louisville B Service Support Center, Eastern Service Area Technical Operations, evaluated the ABB VORTAC and determined that it was damaged beyond repair and the cost to replace it would be prohibitive. Based on the cost analysis to repair or replace the ABB VORTAC, and the availability of existing adjacent area navigation routes and VOR Federal airways in the area supported by the ABB VORTAC, the FAA made a determination to decommission the ABB VORTAC.

As a result of the ABB VORTAC being decommissioned, the four VOR Federal airways V–44, V–47, V–49, and V–51 require amendment actions. The FAA is modifying these airways by removing the route segments previously supported by the ABB VORTAC due to insufficient ground-based navigation aid coverage. The modifications will result in non-continuous route structures for these airways; however, there are other existing adjacent routes and airways available for aircraft flying in the area of the route segments being removed. Since this action merely involves editorial changes by removing reference to the NAVAID in the legal descriptions of the above VOR Federal Airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V–44, V–47, V–49, and V–51. The ABB VORTAC being damaged beyond repair in March 2012, NOTAMed out of service since then, and scheduled to be decommissioned has made this action necessary. The route modifications are outlined below.

V–44: V–44 extends between the Columbia, MO, VOR and Albany, NY, VORTAC. This action removes the route segment between the Samsville, IL, VOR and the Falmouth, KY, VOR.

V–47: V–47 extends between the Pine Bluff, AR, VOR and Waterville, OH, VOR. This action removes the route segment between the Pocket City, IN, VORTAC and the Cincinnati, OH, VORTAC.

V–49: V–49 extends between the Vulcan, AL, VORTAC and Mystic, KY (MYS), VOR. This action terminates the airway at the Mystic, KY, VOR by removing the route segment between the MYS VOR and the ABB VORTAC.

V–51: V–51 extends between Pahokee, FL, VORTAC and Chicago Heights, IL, VORTAC. This action removes the route segment between the Louisville, KY, VORTAC and the Shelbyville, IN, VORTAC.

The navigation aid radials cited in the VOR Federal airway descriptions are stated relative to True north.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be subsequently published in the Order.

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

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

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

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–44 [Amended]

From Columbia, MO; INT Columbia 131° and Foristell, MO, 262° radials; Foristell; Centralia, IL; to Samsville, IL. From Falmouth, KY; York, KY; Parkersburg, WV; Morgantown, WV; Martinsburg, WV; INT Martinsburg 094° and Baltimore, MD, 300° radials; Baltimore; INT Baltimore 122° and Sea Isle, NJ, 267° radials; Sea Isle; INT Sea Isle 040° and Deer Park, NY, 209° radials; Deer Park; INT Deer Park 041° and Bridgeport, CT, 133° radials; Bridgeport; INT Bridgeport 324° and Pawling, NY, 160° radials; Pawling; INT Pawling 342° and Albany, NY, 181° radials; to Albany. The airspace within R–4001B, R–5002A, R–5002B, and R–5002E is excluded when active. The airspace within V–139 and V–308 airways is excluded. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–47 [Amended]

From Pine Bluff, AR; Gilmore, AR; Dyersburg, TN; Cunningham, KY; to Pocket City, IN. From Cincinnati, OH; Rosewood, OH; Flag City, OH; to Waterville, OH.

* * * * *

V–49 [Amended]

From Vulcan, AL; Decatur, AL; Nashville, TN; Bowling Green, KY; to Mystic, KY.

* * * * *

V–51 [Amended]

From Pahokee, FL; INT Pahokee 010°and Treasure, FL, 193° radials; Treasure; INT Treasure 330°and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens 340°and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; to Louisville, KY. From Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; to Chicago Heights, IL.

* * * * *

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

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–19210 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9688]

RIN 1545–BJ64

Retail Inventory Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the retail inventory method of accounting. The regulations restate and clarify the computation of ending inventory values under the retail inventory method and provide a special rule for certain taxpayers that receive margin protection payments or vendor allowances that are required to reduce only cost of goods sold. The regulations affect taxpayers that are retailers and use a retail inventory method.

DATES: *Effective Date:* These regulations are effective on August 15, 2014.

Applicability Date: For date of applicability, see § 1.471–8(f).

FOR FURTHER INFORMATION CONTACT: Christopher Call, (202) 317–7007 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) relating to the retail inventory method of accounting under § 1.471–8 of the Income Tax Regulations. On October 7, 2011, a notice of proposed rulemaking (REG–125949–10) was published in the **Federal Register** (76 FR 62327). A public hearing was not requested or held. No comments were received during the comment period. Three comments were received after the end of the comment period and were considered, as discussed later in this preamble. The proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Revisions

Section 471 of the Internal Revenue Code provides that a taxpayer's method of accounting for inventories must clearly reflect income. Section 1.471–2(c) provides that the bases of inventory valuation most commonly used and meeting the requirements of section 471 are (1) cost and (2) cost or market, whichever is lower (LCM). Section 1.471–3 provides rules for determining inventories at cost. Section 1.471–4 provides rules for determining inventories at lower of cost or market. Section 1.471–8 of the regulations contains rules specific to retailers, allowing them to approximate cost or LCM of the goods in their ending inventory by using the retail inventory method. Under the retail inventory method, a taxpayer computes the value of ending inventory by multiplying a cost complement by the retail selling prices of the goods on hand at the end of the taxable year. The numerator of the cost complement is the value of beginning inventory plus the cost of purchases during the taxable year, and the denominator is the retail selling prices of beginning inventory plus the initial retail selling prices of purchases. For taxpayers using the retail inventory method to value inventories at cost (retail cost method), the denominator of the cost complement is adjusted for all permanent markups and markdowns. Taxpayers using the retail inventory method to value inventories at LCM (retail LCM method) generally do not make adjustments to the denominator for markdowns.

The proposed regulations provided that a taxpayer using the retail LCM method may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is related to or intended to compensate for a permanent reduction in the taxpayer's retail selling price of inventory, often called a margin protection payment or a markdown allowance. The proposed regulations also provided that a taxpayer using the retail inventory method (whether valuing inventories at LCM or at cost) may not reduce the numerator of the cost complement by the amount of a sales-based vendor allowance.

Commenters suggested that taxpayers using the retail LCM method to value inventories should reduce the numerator of the cost complement for all vendor allowances and discounts, including margin protection payments and sales-based vendor allowances (but should not be required to reduce the denominator by the related price reduction), because all allowances and discounts reduce the cost of inventory and allow retailers to achieve their margin goals. The commenters asserted that if the numerator of the cost complement is not reduced for margin protection payments and sales-based vendor allowances, taxpayers' income will not be clearly reflected, the economics of the underlying business transaction will be ignored, and small retailers would be adversely affected. The commenters suggested that small

retailers have less bargaining power than large retailers and are less able to negotiate purchase-based discounts from vendors.

The final regulations do not adopt these comments. A margin protection payment, unlike other types of allowances, is inherently related to a markdown that will be reflected in the retail selling prices of the items remaining in ending inventory. When a taxpayer using retail LCM reduces the numerator of the cost complement by the amount of a margin protection payment without reducing the denominator by the amount of the corresponding markdown, ending inventory value does not clearly reflect income, and does not reflect the economics of the underlying transaction. Taxpayers using the retail cost method to value inventories, as opposed to retail LCM, are allowed to reduce the numerator of the cost complement by the amount of a margin protection payment because these taxpayers also reduce the denominator of the cost complement by the amount of a related markdown, maintaining the relationship between cost and retail price.

With regard to sales-based vendor allowances, the final regulations adopt, with a modification, the proposed rule that the numerator of the cost complement is not reduced for sales-based vendor allowances. Proposed regulations under § 1.471–3(e) provided that sales-based vendor allowances (the amount of an allowance, discount, or price rebate that a taxpayer earns by selling specific merchandise) reduce cost of goods sold and do not reduce ending inventory value. Because the retail inventory method produces an ending inventory value and sales-based vendor allowances could not be allocated to ending inventory, the proposed regulations under § 1.471–8 provided that sales-based vendor allowances do not reduce the numerator of the cost complement. The final regulations under § 1.471–3(e) (TD 9652, 79 FR 2094) apply specifically to only one type of sales-based vendor allowance, a sales-based vendor chargeback, and reserve rules for other types of sales-based vendor allowances. To conform to this modification, these final regulations under § 1.471–8 provide that sales-based vendor allowances that are required to reduce only cost of goods sold under § 1.471–3(e) do not reduce the numerator of the cost complement. This rule will apply only to sales-based vendor chargebacks until further guidance is issued under § 1.471–3(e).

Commenters also requested that the final regulations allow retail LCM taxpayers to reduce the numerator of the cost complement by margin protection payments and sales-based vendor allowances because requiring taxpayers to track margin protection payments and sales-based vendor allowances separately from other types of allowances would create burdensome recordkeeping requirements. This comment is not adopted because, as discussed earlier in this preamble, allowing a retail LCM taxpayer to reduce the numerator of the cost complement by the amount of a margin protection payment without reducing the denominator by the amount of the corresponding markdown would not clearly reflect income and would not reflect the economics of the underlying transaction. Nonetheless, as discussed later in this preamble, to ease taxpayers' compliance burden, the final regulations provide alternative methods and procedures for computing the cost complement for retail LCM taxpayers.

The preamble to the proposed regulations requested comments on an alternative method for retail LCM taxpayers to account for margin protection payments when computing the cost complement. The method described in that preamble would have permitted retail LCM taxpayers to reduce the numerator of the cost complement for all non-sales-based allowances, discounts, or price rebates, including margin protection payments or markdown allowances, and also would have required a reduction of the denominator of the cost complement for permanent markdowns to which the margin protection payments or markdown allowances relate (related markdowns). Although commenters did not address this proposal explicitly, they stated that in some cases, based on the nature of their business dealings with vendors and the variety of allowances offered, taxpayers have difficulty distinguishing between the different types of vendor allowances their vendors provide. For example, commenters contend that it might be difficult for a taxpayer to distinguish the amount of a margin protection payment or markdown allowance received from a vendor from the amounts of other types of allowances received from that vendor, thus making it difficult to determine the amount by which they were required to reduce the numerator of the cost complement under the proposed regulations.

The final regulations address these comments and ease taxpayers' compliance with the regulations by allowing retail LCM taxpayers to use a method similar to the method described in the preamble to the proposed regulations that does not require taxpayers to distinguish the amounts of margin protection payments from the amounts of other vendor allowances (except for vendor allowances required to be allocated to cost of goods sold under § 1.471–3(e)). Under the alternative method provided in the final regulations, retail LCM taxpayers reduce the numerator for margin protection payments and must quantify and reduce the denominator for the related markdowns. This alternative method results in a reduction of the numerator of the cost complement by all vendor allowances other than those required to reduce cost of goods sold under § 1.471–3(e). This alternative method accordingly reduces the compliance burden for taxpayers that cannot distinguish margin protection payments from other allowances, but that can identify the markdowns related to those margin protection payments.

Commenters also stated that some accounting systems cannot sufficiently track the related markdowns. Accordingly, a second alternative provided in the final regulations allows taxpayers that are able to determine the amount of their margin protection payments to reduce the numerator of the cost complement for the margin protection payments and adjust the denominator by the amount that, in conjunction with the reduction of the numerator, maintains what would have been the cost complement percentage before taking into account the margin protection payments and related markdowns. This second alternative method assumes that a margin protection payment maintains the taxpayer's profit margin after a related markdown in retail selling price. Thus, if before taking into account the margin protection payment and the related markdown the cost complement is 50 percent ($10/$20), and the taxpayer receives a margin protection payment of $2, the taxpayer must reduce the denominator by $4 to maintain a cost complement of 50 percent ($8/$16) under this second alternative method.

A retail LCM taxpayer must use one of these three methods (the general method and the two alternative methods) for computing all of its cost complements. A change from one to another of these methods is a change in method of accounting.

The final regulations further facilitate identifying margin protection payments and related markdowns by allowing retail LCM taxpayers to use statistical sampling in accordance with Rev. Proc. 2011–42 (2011–37 IRB 318), see

§ 601.601(d), in conjunction with any of the three methods. A retail LCM taxpayer using statistical sampling must use it for all margin protection payments and related markdowns associated with the inventory items valued by a particular cost complement. However, a retail LCM taxpayer that calculates more than one cost complement is not required to use statistical sampling for all cost complements. A change from using to not using statistical sampling, or from not using to using statistical sampling, to identify margin protection payments and related markdowns is not a change in method of accounting.

The proposed regulations provided that a taxpayer may apply the retail inventory method to a department, a class of goods, or a stock-keeping unit. A commenter suggested that the final regulations specify that a taxpayer may use the retail inventory method to value ending inventory for a sub-class of goods, style of goods, or other similar category of goods to avoid the implication that the scope of the retail inventory method is limited to those groupings specifically identified in the proposed regulations. The categories suggested by the commenter are already encompassed by the terms department, class of goods, or stock-keeping unit. Accordingly, the final regulations do not adopt this comment.

A commenter suggested that the final regulations should allow taxpayers to calculate their cost complements using a measurement period shorter than the entire taxable year and should clarify whether beginning inventory may or must be eliminated from the cost complement of a last-in, first-out (LIFO) taxpayer using the retail inventory method. These issues were not addressed in the proposed regulations and therefore are not addressed in the final regulations. However, the final regulations do not reflect a change in established administrative practice regarding whether LIFO taxpayers using the retail inventory method may exclude beginning inventory from the cost complement.

Effective/Applicability Date

These regulations apply to taxable years beginning after December 31, 2014. For taxable years beginning before January 1, 2015, see § 1.471–8 as contained in 26 CFR part 1, revised April 1, 2014.

Special Analyses

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. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does 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 that preceded these final 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 from the Small Business Administration.

Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.471–8 is revised to read as follows:

§ 1.471–8 Inventories of retail merchants.

(a) *In general.* A taxpayer that is a retail merchant may use the retail inventory method of accounting described in this section. The retail inventory method uses a formula to convert the retail selling price of ending inventory to an approximation of cost (retail cost method) or an approximation of lower of cost or market (retail LCM method). A taxpayer may use the retail inventory method instead of valuing inventory at cost under § 1.471–3 or lower of cost or market under § 1.471–4.

(b) *Computation*—(1) *In general.* A taxpayer computes the value of ending inventory under the retail inventory method by multiplying a cost complement by the retail selling prices of the goods on hand at the end of the taxable year.

(2) *Cost complement*—(i) *In general.* The cost complement is a ratio computed as follows:

(A) The numerator is the value of beginning inventory plus the cost (as determined under § 1.471–3, except as otherwise provided in this section) of goods purchased during the taxable year.

(B) The denominator is the retail selling prices of beginning inventory plus the retail selling prices of goods purchased during the year (that is, the bona fide retail selling prices of the items at the time acquired), adjusted for all permanent markups and markdowns, including markup and markdown cancellations and corrections. The denominator is not adjusted for temporary markups or markdowns.

(ii) *Vendor allowances required to reduce only cost of goods sold.* A taxpayer may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is required under § 1.471–3(e) to reduce only cost of goods sold.

(3) *Additional rules for cost complement for retail LCM method*—(i) *In general*—(A) *Margin protection payments.* A taxpayer using the retail LCM method may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is related to or intended to compensate for a permanent reduction in the taxpayer's retail selling price of inventory (a margin protection payment).

(B) *Markdowns.* A taxpayer using the retail LCM method does not adjust the denominator of the cost complement for markdowns (and markdown cancellations or corrections). Markups must be reduced by the markdowns made to cancel or correct them.

(ii) *Alternative methods for computing cost complement*—(A) *In general.* In lieu of the method described in paragraph (b)(3)(i) of this section, a taxpayer using the retail LCM method may compute the cost complement using one of the alternative methods described in this paragraph (b)(3)(ii). A taxpayer using an alternative method under this paragraph (b)(3)(ii) must use that method for all cost complements.

(B) *Adjust numerator and denominator.* A taxpayer using the retail LCM method may reduce the numerator of the cost complement by the amount of all margin protection payments if the taxpayer also reduces the denominator of the cost complement by the amount of the permanent reduction in retail selling price to which the margin protection payments relate (related markdowns).

(C) *Deemed adjustment to denominator.* A taxpayer using the retail LCM method that is able to determine the amount of all margin protection payments but cannot determine the amount of the related markdowns may reduce the numerator of the cost complement by the amount of all margin protection payments if the taxpayer also reduces the denominator by the amount that, in conjunction with the reduction of the numerator for the margin protection payments, maintains what would have been the cost complement percentage before taking into account the margin protection payment and the related markdown. A taxpayer that can determine the amount of a related markdown but not the associated margin protection payments may not use this method to compute an adjustment to the numerator.

(iii) *Statistical sampling.* A taxpayer using the retail LCM method may use statistical sampling in accordance with Rev. Proc. 2011–42 or any successor (see § 601.601(d) of this chapter), in conjunction with any method of computing the cost complement described in this paragraph (b)(3), to determine the amount of margin protection payments and related markdowns. A taxpayer using statistical sampling must use it for all margin protection payments and related markdowns associated with the inventory items valued by a particular cost complement, but is not required to use it for every cost complement.

(4) *Ending inventory retail selling prices.* A taxpayer must include all permanent markups and markdowns but may not include temporary markups or markdowns in determining the retail selling prices of goods on hand at the end of the taxable year. A taxpayer may not include a markdown that is not an actual reduction of retail selling price.

(c) *Special rules for LIFO taxpayers.* A taxpayer using the last-in, first-out (LIFO) inventory method with the retail inventory method uses the retail cost method. See § 1.472–1(k) for additional adjustments for a taxpayer using the LIFO inventory method with the retail cost method.

(d) *Scope of retail inventory method.* A taxpayer may use the retail inventory method to value ending inventory for a department, a class of goods, or a stock-keeping unit. A taxpayer maintaining more than one department or dealing in classes of goods with different percentages of gross profit must compute cost complements separately for each department or class of goods.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) R, a retail merchant who uses the retail LCM method and uses a calendar taxable year, has no beginning inventory in 2012. R purchases 40 tables during 2012 for $60 each for a total of $2,400. R offers the tables for sale at $100 each for an aggregate retail selling price of $4,000. R does not sell any tables at a price of $100, so R permanently marks down the retail selling price of its tables to $90 each. As a result of the $10 markdown, R's supplier provides R a $6 per table margin protection payment. R sells 25 tables during 2012 and has 15 tables in ending inventory at the end of 2012.

(ii) Under paragraph (b)(2)(i)(A) of this section, the numerator of the cost complement is the aggregate cost of the tables, $2,400. Under paragraph (b)(3)(i)(A) of this section, R may not reduce the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, the denominator of the cost complement is the aggregate of the bona fide retail selling prices of all the tables at the time acquired, $4,000. Under paragraph (b)(3)(i)(B) of this section, R does not adjust the denominator of the cost complement for the markdown. Therefore, R's cost complement is $2,400/$4,000, or 60%.

(iii) Under paragraph (b)(4) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is $1,350 (15 * $90). Approximating LCM under the retail method, the value of R's ending table inventory is $810 (60% * $1,350).

Example 2. (i) The facts are the same as in *Example 1,* except that R permanently reduces the retail selling price of all 40 tables to $50 per unit and the 15 tables on hand at the end of the year are marked for sale at that price. The additional $40 markdown is unrelated to a margin protection payment or other allowance.

(ii) Under paragraph (b)(3)(i)(B) of this section, R does not adjust the denominator of the cost complement for the markdown. Therefore, R's cost complement is $2,400/$4,000, or 60%.

(iii) Under paragraph (b)(4) of this section, R includes the permanent markdowns in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $750 (15 * $50). Approximating LCM under the retail method, the value of R's ending inventory is $450 (60% * $750).

Example 3. (i) The facts are the same as in *Example 1,* except that R computes the cost complement using the alternative method under paragraph (b)(3)(ii)(B) of this section.

(ii) R reduces the numerator of the cost complement by the margin protection payments of $240 ($6 * 40) and reduces the denominator of the cost complement by the related markdowns of $400 ($10 * 40). Therefore, R's cost complement is $2,160/$3,600, or 60%.

(iii) Under paragraph (b)(4) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is $1,350 (15 * $90). Approximating LCM under the retail method, the value of R's ending table inventory is $810 (60% * $1,350).

Example 4. (i) The facts are the same as in *Example 1,* except that R cannot determine the amount of its related markdowns and computes the cost complement using the alternative method under paragraph (b)(3)(ii)(C) of this section.

(ii) R reduces the numerator of the cost complement by the margin protection payments of $240 ($6 * 40). R reduces the denominator of the cost complement by the amount that, in conjunction with the reduction in the numerator, maintains the cost complement percentage before taking into account the margin protection payments and the related markdowns. R's original cost complement was 60% ($2,400/$4,000). The numerator of R's new cost complement is $2,160 ($2,400 − $240). Therefore, R reduces the denominator by $400, which maintains the cost complement of 60% ($2,160/$3,600).

(iii) Under paragraph (b)(4) of this section, R includes the permanent markdowns in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is $1,350 (15 * $90). Approximating LCM under the retail method, the value of R's ending table inventory is $810 (60% * $1,350).

Example 5. (i) The facts are the same as in *Example 1,* except that R uses the LIFO inventory method. R must value inventories at cost and, under paragraph (c) of this section, uses the retail cost method.

(ii) Under paragraph (b)(2)(i)(A) of this section, R reduces the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, R includes the permanent markdown in the denominator of the cost complement. Therefore, R's cost complement is $2,160/$3,600, or 60%.

(iii) Under paragraph (b)(4) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $1,350 (15 * $90). Approximating cost under the retail method, the value of R's ending inventory is $810 (60% * $1,350).

(f) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2014. For taxable years beginning before January 1, 2015, see § 1.471–8 as contained in 26 CFR part 1, revised April 1, 2014.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 30, 2014

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–19275 Filed 8–14–14; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2014. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: *Effective Date:* September 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions — including interest assumptions — for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2014.[1]

The September 2014 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2014, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2014, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 251, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
251	9–1–14	10–1–14	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 251, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*		*	*		*
251	9–1–14	10–1–14	1.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 12th day of August 2014.

Philip Hertz,

Deputy General Counsel, Pension Benefit Guaranty Corporation.

*[FR Doc. 2014–19381 Filed 8–14–14; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC44

Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim Final Rule.

SUMMARY: The Department of the Treasury is issuing regulations concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund, which was established in the Treasury of the United States by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: *Effective date for the Interim Final Rule:* October 14, 2014. Comments on the Interim Final Rule are due: September 15, 2014.

ADDRESSES: Treasury invites comments on the topics addressed in this Interim Final 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. These funds will be invested and made available through five components of the Act described below.

The Direct Component sets aside 35 percent of the penalties paid into the trust fund for eligible activities proposed by 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 Comprehensive Plan Component sets aside 30 percent of the penalties, plus half of all interest earned on trust fund investments, to be managed by a new independent Federal entity called the Gulf Coast Ecosystem Restoration Council (Council). The Council includes members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, the Secretary of Commerce, at this time serves as Chairperson of the Council. The Council will direct those funds to projects and programs for the restoration of the Gulf Coast region, pursuant to a comprehensive plan that will be developed by the Council. Under the Spill Impact Component, entities representing the Gulf Coast States can use an additional 30 percent of penalties in the trust fund for eligible activities pursuant to State Expenditure Plans approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on trust fund investments, will be divided equally between the NOAA RESTORE Act Science Program established by the National Oceanic and Atmospheric Administration (NOAA), an operating unit of the Department of Commerce, and the Centers of Excellence Research Grants Program.

Treasury has several roles in administering the trust fund. One role is to establish procedures, in consultation with the Departments of the Interior and Commerce, concerning the deposit and expenditure of amounts from the trust fund. The procedures must include compliance measures for the programs and activities carried out under the Act, as well as auditing requirements to determine whether amounts are expended as intended. Treasury will also administer grants for the Direct Component and Centers of Excellence Research Grants Program. The Treasury Inspector General is authorized to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under the Act. In addition, the Act requires Treasury to withhold funds from a Gulf Coast State, Florida county, or Louisiana parish if Treasury determines that trust fund monies have been used for an unauthorized purpose, or if a condition on the use of funds has been violated.

Treasury published a proposed rule on September 6, 2013, containing procedures regarding trust fund investments, as well as procedures to implement the five components of the

Act. These procedures recognized that each component makes funds available through grants. Accordingly, the procedures contained not only requirements in the Act, but also administrative requirements common to Federal grant programs. The procedures also outlined a structure for compliance monitoring. The Federal and state entities that administer grants under the Act will be primarily responsible for overseeing compliance with the terms of their award agreements. In addition, Treasury will have an important and supplemental role in overseeing the states' compliance with requirements in the Comprehensive Plan Component and the Spill Impact Component.

II. Public Comments and Summary of Interim Final Rule

Treasury received over 1,200 comment letters on the proposed rule from individuals, public interest groups, state and local governments, and research institutions. The comments were generally positive. Most comments offered views or requested information regarding the activities eligible for funding, the process and timing for issuing grants, and other aspects of grant administration. Several comments also urged that Treasury provide additional opportunities for public comment.

Treasury is issuing its regulations as an Interim Final Rule, which will take effect 60 days after publication in the **Federal Register**. Treasury will accept comments on the Interim Final Rule for 30 days after publication, and publish a Final Rule after considering any comments. Separately, Treasury has published a proposed rule that allocates shares to individual Louisiana parishes under the Direct Component. Treasury is accepting public comments on the proposed rule for 30 days after publication.

As noted in the preamble to the September 6, 2013, proposed rule, requirements for RESTORE Act grants are partly defined by the Act and Treasury's regulations, and partly by an extensive body of pre-existing requirements. Some of these pre-existing requirements are administrative requirements in circulars issued by the Office of Management and Budget (OMB). When Treasury published its proposed rule, OMB was completing a compilation and modification of uniform requirements for grants awarded by Federal agencies to states, local governments, Indian tribes, institutions of higher learning, and nonprofit organizations. OMB published an Advanced Notice of Proposed Guidance on February 12, 2012, (ANPG available at *www.regulations.gov* under docket number OMB–2012–0002), and a Notice of Proposed Guidance on February 1, 2013 (NPG available at *www.regulations.gov* under docket number OMB–2013–0001). After considering more than 300 public comments, OMB issued its final guidance on December 26, 2013. The final guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), will be published in the Code of Federal Regulations at 2 CFR Part 200, and is currently available at 78 FR 78590.

Because OMB's Uniform Guidance has already undergone an extensive public review, its requirements do not need additional public comment before they are applied to grants under the RESTORE Act. Readers seeking information about the requirements applying to audits, allowable costs, disbursements, payments, procurements, recordkeeping, and reporting, among other topics, should consult OMB's Uniform Guidance. Requirements in areas covered by the guidance will be applied to individual grants through a grant agreement.

The Interim Final Rule continues to require compliance with applicable Federal laws and policies for grants, and does not refer specifically to OMB's Uniform Guidance. Treasury received many comments requesting that Treasury's regulation specifically identify the requirements that apply. Each individual grant agreement is the appropriate place to comprehensively identify these requirements. As stated in the Uniform Guidance, the Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriation provisions, and incorporate them either directly or by reference in the terms and conditions of the award. 2 CFR 200.300. The Uniform Guidance describes most administrative requirements, cost principles, and audit requirements applying to Federal awards under the Act. All federal agencies, however, are required to implement the policies and procedures in the Uniform Guidance by promulgating a regulation that will be effective by the end of the year. Because regulations to implement the Uniform Guidance must still be published, Treasury's RESTORE Act regulations generally refer to Federal laws and policies applying to grants.

Section-by-Section Analysis

Section 34.1 (Purpose)

This section describes the general scope of the Interim Final Rule. Editorial changes have been made for clarity.

Section 34.2 (Definitions)

This section defines terms used in the Interim Final Rule. The Interim Final Rule has several new definitions from the proposed rule. *Activity* has been defined to mean ''activity, project, or program.'' The Act uses the term *activity* broadly to encompass projects, programs, and other activities that may be funded under the Act. When the Interim Final Rule uses the term *activity,* it has the same broad meaning. In response to a comment, *infrastructure* has been defined as well, in order to assist the Council and the Gulf Coast States in applying the limits on infrastructure projects in the Spill Impact Component. The Interim Final Rule also includes a definition of *assignee,* a term used in the Comprehensive Plan Component of the Interim Final Rule. An assignee is a Federal agency or a Gulf Coast State that has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan.

The definitions of *administrative costs* and *administrative expenses* have been revised in response to comments on the proposed rule. Several comments asked Treasury to clarify the scope of these terms, and questioned why the terms were defined differently. Other comments suggested revisions. At least one comment suggested that *administrative costs* should not be defined at all.

The statute specifically authorizes and the rule defines administrative expenses and administrative costs. Funds are also available for other costs authorized by the five RESTORE Act components or programs. Treasury encourages grantees to minimize administrative expenses, administrative costs, and indirect costs within these components or programs to the extent possible.

The Act uses the term *administrative expenses* with reference to the Council and NOAA. The Act does not define the term, and it does not have a precise, commonly accepted meaning in government accounting. The Act does cap administrative expenses at 3 percent of funds made available to the Council and NOAA. Because the cap effectively limits administrative activities, the term should be construed to avoid unintended limits on the restoration, protection, and scientific activities Congress requires the Council and NOAA to perform.

In light of public comments, the Interim Final Rule defines administrative expenses to mean

expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative expenses do not include expenses that are identified specifically with, or readily assignable to, (a) facilities; (b) eligible projects, programs, or planning activities; (c) activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections; (d) the Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments; (e) the Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component; (f) preparation of reports required by the Act; (g) establishment and operation of advisory committees; or (h) collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem. The definition applies to administrative expenses for services provided by the Council and NOAA staff, as well as such services provided through an interagency agreement, or by contract. When an expense has a mixed purpose, the Council and NOAA will need to make reasonable judgments about the percentage attributable to administrative activities.

Treasury is also clarifying the definition of *administrative costs* in the Interim Final Rule. The term *administrative costs* is used with reference to the Gulf Coast States, Florida counties, and Louisiana parishes, which receive their funds through grants. The revised definition is similar, but not identical, to the definition of administrative expenses. Under the Interim Final Rule, administrative costs are indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs may include costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, (a) facilities; (b) eligible projects, programs, or planning activities; or (c) activities relating to grant applications, awards, audit requirements, or post-award management, including payments and collections. When a cost can be attributed to more than one purpose, states and local governments will need to make reasonable judgments about the percentage that is administrative. OMB's Uniform Guidance provides an extensive discussion of allowable and allocable costs, which applies to administrative costs under the Act. See 2 CFR 200.402—200.414.

Treasury has added a new definition of *planning assistance,* an eligible activity listed in § 34.201. This definition is discussed later in the preamble.

In addition to these changes, the Interim Final Rule includes editorial changes to the definition of *Gulf Coast State entity,* a new definition of *Multiyear Implementation Plan* and *pass-through entity* for the reader's convenience, and a technical change to the definition of *recipient.* The technical change makes clear that a recipient also includes a pass-through entity that provides a subaward to a recipient to carry out part of the RESTORE Act program.

Treasury is not revising the definition of *best available science.* Like the proposed rule, the Interim Final Rule defines this term exactly as stated in the Act. The term means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Some comments proposed broader definitions of *best available science,* asserting that the statutory definition is inadequate. Other comments urged Treasury to require consideration of cultural and social knowledge and other factors, and proposed characteristics of best available science. Treasury does not have authority to change the definition Congress wrote into the Act. Treasury recognizes, however, that guidelines regarding interpretation and application of this term may be helpful. In consultation with Council members, Treasury is developing guidelines for use in evaluating the best available science criteria for grants under the Direct Component. Treasury will provide further information at a later time.

Treasury received other comments suggesting additional definitions and editorial changes. OMB's Uniform Guidance includes an extensive list of definitions pertaining to grants, audits, and cost principles. These definitions will apply to grants issued under the Act.

Section 34.100 (The Trust Fund)

This section describes the deposit of amounts into the trust fund, and when the trust fund terminates. Minor editorial changes were made to clarify when the trust fund terminates.

Section 34.101 (Investments)

This section describes how Treasury will invest amounts in the trust fund. There are no changes in this section from the proposed rule.

Section 34.102 (Interest Earned)

This section describes the availability of interest earned on amounts in the trust fund. There are no changes in this section from the proposed rule.

Section 34.103 (Allocation of Funds)

This section describes the general allocation of trust fund amounts. In response to comments, editorial changes have been made for consistency with the Act.

Section 34.104 (Expenditures)

The Interim Final Rule states that trust fund amounts are available for expenditure solely for direct and indirect expenses of eligible activities without fiscal year limitation. Treasury has deleted a reference in the proposed rule to administrative costs and administrative expenses, because these costs and expenses are included among other allowable costs. The proposed rule also stated that grantees must minimize the time between the receipt of funds and the disbursement of funds. Treasury received several comments seeking clarification on this statement and more generally on requirements pertaining to payments and program income.

OMB's Uniform Guidance has an extensive discussion of the requirements applying to payments at 2 CFR 200.305. To ensure consistency between the Interim Final Rule and OMB's Uniform Guidance, Treasury is deleting the sentence from § 34.104 in the proposed rule regarding the timing of disbursements. The Uniform Guidance also has a discussion about program income at 2 CFR 200.307. Please refer to the Uniform Guidance for detailed information about general requirements that apply to payments and program income.

Section 34.105 (Waiver)

This section describes the circumstances when Treasury may waive or modify in a single case or class of cases a requirement in the regulations. Several comments asked

Treasury to clarify when this section will be used, and to seek public comment before applying it. Treasury expects to use its waiver authority sparingly, and never in a manner that is inconsistent with applicable law. Treasury included this section because it is difficult to foresee, at an early stage in implementing the Act, how the regulations will apply to all circumstances. Treasury will provide public notice whenever a waiver or modification under this section would materially change a regulatory requirement.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components

Gulf RESTORE Program—Eligibility Criteria

Treasury received numerous comments proposing uniform requirements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Gulf RESTORE Program. Several comments urged uniform eligibility criteria. Other comments suggested criteria that would give priority to certain project proposals, based on whether they provide an overall net benefit, benefit a variety of resources, are cost effective, or other factors. Additional comments proposed changes that would allow individuals to submit project proposals, and other changes that would require uniform requirements for public engagement.

The Act does not mandate uniform requirements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component. For each component, there are different eligibility criteria, different processes for selecting activities, and different entities responsible for making those selections. Accordingly, the Interim Final Rule has different requirements for each component. The Interim Final Rule and the Council's own procedures provide opportunities for the public to offer views on project selection and design. Members of the public who have views in these areas should present them to the entities that will propose activities for funding.

Section 34.200 (General)

This section generally describes the policies and procedures for eligible activities under the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Treasury has revised this section in the Interim Final Rule.

In the proposed rule, § 34.200(a)(1) stated that costs incurred, whether charged on a direct or indirect basis, must conform with the applicable OMB circulars and guidance. Treasury received several comments seeking clarification of the rules applying to costs. OMB's Uniform Guidance includes an extensive discussion of administrative requirements, including information about allowable costs. At this time, the Uniform Guidance applies to grants issued under the Act. Within the year, all Federal agencies are required to incorporate the Uniform Guidance into their own regulations. Because the governing rule in the future will likely be an agency regulation, rather than the Uniform Guidance, the Interim Final Rule refers to ''applicable Federal law and policies on grants.''

Section 34.200(a)(3) in the proposed rule stated that environmental review and compliance procedures must be complied with for each program, project, or activity, as applicable. Treasury has deleted this sentence because it is unnecessary, given broader and more descriptive requirements in OMB's Uniform Guidance. The Uniform Guidance states, that the Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award. 2 CFR 200.300(a).

Section 34.200(a)(3) in the proposed rule also mentioned pre-award costs. The proposed rule stated that grant agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by applicable OMB circulars and guidance. Treasury received a number of requests, particularly from Florida counties, to make a more definite statement in the Interim Final Rule about the availability of pre-award costs.

OMB's Uniform Guidance states that pre-award costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. 2 CFR 200.458. Treasury cannot, in the context of a rulemaking, determine whether any particular pre-award cost is eligible for reimbursement under future grants. In addition, Treasury is not the Federal awarding agency for three of the five components in the Act. To avoid inconsistency with the Uniform Guidance, the sentence about pre-award costs has been deleted from the Interim Final Rule. Entities should contact the appropriate Federal awarding agency for guidance about reimbursement of particular pre-award costs.

Finally, § 34.200(b) of the proposed rule stated that a Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity and authorized by Federal law. Treasury received several comments about this provision. One comment suggested that Treasury prohibit other Federal agencies from reducing their funding to states by the amount of RESTORE Act funds used for cost sharing or matching. Another comment suggested that this provision be extended to the Centers of Excellence Research Grants Program. Other comments asked for clarification about the scope of the provision.

Treasury has not substantively changed the text of § 34.200(b) in the Interim Final Rule, which closely follows the statutory language at section 311(t)(1)(N) and (t)(3)(F) of the Federal Water Pollution Control Act. Under OMB's Uniform Guidance, a non-Federal entity cannot use amounts paid by the Federal government under a Federal award to satisfy the entity's cost sharing or matching responsibilities under another Federal award, unless certain criteria are met. One criterion is when a Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs. 2 CFR 200.306(b)(5). The Act allows funds made available under the Direct Component and Spill Impact Component to satisfy the cost-sharing requirements of other Federal programs, but not funds made available under other parts of the Act.

Minor editorial changes have been made to other parts of § 34.200 for clarity.

Section 34.201 (Eligible Activities for the Direct Component)

This section describes the activities that are eligible for funding under the Direct Component. Treasury received many comments about this section. Several comments urged Treasury to defer to the states' judgment on selection and design. As stated in the

preamble to the proposed rule, Treasury will review applications to determine that they document, with some specificity, compliance with eligibility and other requirements in the RESTORE Act and these regulations. On matters requiring special expertise, such as the application of best available science, Treasury will apply a ''reasonable person'' standard of review that recognizes the substantive expertise of the states, Florida counties, and Louisiana parishes, while still requiring the submittal of supporting documentation. Treasury is using a similar standard when evaluating an activity's geographic scope, as discussed below. This approach acknowledges the expertise and important role that states, Florida counties, and Louisiana parishes have in selecting projects for the Direct Component, while going beyond mere ''check the box'' review.

Several comments also addressed the geographic scope of eligible activities. The proposed rule stated that certain activities are eligible for funding to the extent they are carried out in the Gulf Coast region. Several comments urged Treasury to interpret this language broadly, in order to allow activities benefitting that geographic area regardless of where the work is done. Treasury agrees that a broad interpretation is most consistent with the statute and Congressional intent. Repeatedly, the Act refers to the Gulf Coast region as the place where results occur, not necessarily where work is done. An interpretation that focused solely on the geographic location of the project site—rather than project benefits—would unnecessarily exclude activities contemplated by the Act, and be difficult to apply when work is done in multiple locations.

In response to these comments, the Interim Final Rule explains when a Direct Component activity is ''carried out'' in the Gulf Coast region. The rule states that activities are carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant.

Treasury intends this new language to achieve several goals. The language recognizes the expertise of the entity applying for a grant, as well as Treasury's limited role in grant review and the applicant's knowledge and understanding of Gulf Coast restoration. Potential applicants for funds will be Gulf Coast States, counties, and parishes, each of which has significant local and technical expertise. The language focuses on ''each severable part'' of an activity, to discourage grant applicants from seeking approval of ineligible projects by grouping them with eligible ones. The language also requires that each severable part be ''primarily designed'' to restore or protect the Gulf Coast region. Treasury anticipates that some activities which are designed to benefit the Gulf Coast region may also provide secondary benefits to other areas. An upstream water quality project that is designed to reduce nutrient loading at the coast may also improve water quality within the watershed. By focusing on what an activity is primarily designed to accomplish, Treasury seeks to avoid arguments that secondary benefits to other geographic areas are enough to disqualify otherwise eligible activities.

Additional comments urged Treasury to add eligibility requirements, or to declare that particular kinds of activities are eligible for funding, such as long-term stewardship activities. Treasury is not adding new eligibility criteria for activities under the Act, or singling out particular activities that are not mentioned in the Act. The Act sets broad criteria for selecting activities, and leaves to the Gulf Coast States, Florida counties, and Louisiana parishes whether to apply additional criteria to achieve economic or environmental goals. Members of the public should direct their suggestions for additional eligibility factors to the entities that will propose activities for funding.

Treasury also received several comments regarding planning assistance. Some comments asked Treasury to add public engagement as a type of planning activity. Florida counties urged that planning costs should include costs for the Gulf Consortium, which is an entity formed under Florida law and made up of 23 Florida counties. Several comments also asserted that funds should be available to pay for Multiyear Implementation Plans. Other comments asserted that planning activities should not be defined at all.

The Interim Final Rule has been revised to address the comments on planning. The Interim Final Rule now uses the term *planning assistance,* to be consistent with the Act, and defines that term in § 34.2. Planning assistance means tasks required to prepare plans for eligible activities, as well as one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, and monitor grants after award, and audit compliance with respect to activities in a Multiyear Implementation Plan or State Expenditure Plan. This change addresses comments, particularly from Florida counties, that noted the expense of starting up an operation to manage grants. Effective grants management may require one-time investments to track payments, develop policies and internal controls, and make other preparations necessary to comply with the Act and Treasury regulations. Eligible entities may seek grants to fund preparations of this kind with respect to activities in a Multiyear Implementation Plan or State Expenditure Plan. Planning assistance is not intended to cover ongoing activities or operations and maintenance, although costs for activities, operations, and maintenance may be allocable to grants for other eligible activities.

The revised language is broad enough to include public engagement activities that are part of data gathering, studies, analysis, or the preparation of plans for eligible activities. For example, obtaining public comment on Multiyear Implementation Plans and State Expenditure Plans is an eligible planning activity, because it is a necessary part of preparing the plans.

Additional language, new in the Interim Final Rule, requires that all Direct Component activities be included in and conform to the Multiyear Implementation Plan required by § 34.303. As stated in the rule, states must seek public review and comment on their Multiyear Implementation Plans before submitting them to Treasury. This step allows the public to offer views on particular projects, the order in which they will be funded, and the overall strategy for using funds under the Act. The new language added to § 34.201 will help ensure that activities submitted in a grant application have been presented to the public and incorporated into the Multiyear Implementation Plan.

Section 34.202 (Eligible Activities for the Comprehensive Plan Component)

The section identifies the activities eligible for funding under the Comprehensive Plan Component. The list includes not only projects and programs, but also activities that the Act specifically requires or allows the Council to perform. Many comments addressed project selection under the Comprehensive Plan Component. In response to these comments and for clarity, Treasury has revised the proposed rule to provide that the Council may expend funds to carry out activities in the Gulf Coast region that are included in the Comprehensive

Plan, as described in 33 U.S.C. 1321(t)(2).

Among other things, the statute prescribes priorities that the Council must follow when selecting projects and programs for the Initial Comprehensive Plan that will be carried out in the first three years, subject to available funds. Except for certain projects and programs that were authorized prior to July 6, 2012, the Council's three-year list must give highest priority to projects meeting one or more of the following criteria:

1. Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

2. Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

3. Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

4. Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

See 33 U.S.C. 1321(t)(2)(D)(iii). The Council is responsible for making selections within statutory parameters. The Council's selection process, described in the Initial Comprehensive Plan, will provide many opportunities for the public to comment on the activities the Council should fund.

The proposed rule allowed the Council to use funds from the Comprehensive Plan Component to fund its activities under the Spill Impact Component. Some comments questioned this use. The Act requires the Council to undertake several functions with regard to the Spill Impact Component. The Council must issue regulations allocating funds between the five Gulf Coast States, review State Expenditure Plans, and disburse amounts for eligible projects and programs, among other things. Because all of the Council's funding to operate comes through the Comprehensive Plan Component, the Council must use funds from that component to perform its statutory obligations. For this reason, the Council included its responsibilities under the Spill Impact Component in the Initial Comprehensive Plan.

In response to comments, Treasury has added new language to § 34.202 to clarify when a project or program selected by the Council is carried out in the Gulf Coast region, as required by 33 U.S.C. 1321(t)(2)(E)(IV). That occurs when, in the reasonable judgment of the Council, each severable part of the project or program is primarily designed to restore or protect that geographic area. The Interim Final Rule requires the Council to document the basis for its judgment when it selects the project or program. Similar language also appears in the Direct Component and the Spill Impact Component of Treasury's regulation. In each case, the language gives deference to the reasonable judgment of the entity that selects an activity to restore or protect the Gulf Coast region.

One activity that is not specifically mentioned in the Comprehensive Plan Component is public engagement. Public engagement can be an eligible activity. It is a necessary part of selecting projects and programs, conducting assessments under the National Environmental Policy Act, as well as performing other programmatic and administrative activities. To the extent public engagement costs can be identified specifically with, or readily assignable to the programmatic activities excluded from the definition of *administrative expenses,* they will not be subject to a three percent cap.

Section 34.203 (Eligible Activities for the Spill Impact Component)

This section describes the activities that are eligible for funding under the Spill Impact Component. Several comments suggested additional or different eligibility criteria, such as the criteria applying to activities under the Comprehensive Plan Component. Other comments proposed that Treasury give the states guidance on how they demonstrate ecological, fisheries restoration, and economic recovery in their State Expenditure Plans. Several comments offered views about how particular states should spend their funds. Comments also requested that funds be available for the preparation of State Expenditure Plans.

The Act gives the Council responsibility for administering the Spill Impact Component. Among other things, the Council determines each state's share, based on criteria in the Act, and disburses funds for eligible activities. The Council chair also must approve State Expenditure Plans. Given these important roles, the Council is an appropriate body to determine whether and how to elaborate on the statutory eligibility criteria. Accordingly, the Interim Final Rule preserves the Council's discretion to issue guidance or regulations on this subject that are consistent with the Act.

Treasury made other changes, however, in response to comments. Treasury added a provision describing when an activity in a State Expenditure Plan is carried out in the Gulf Coast region. Treasury also clarified that funding is available for developing State Expenditure Plans. The Interim Final Rule also states that eligible activities must be included in, and conform to, the State Expenditure Plan. This clarification helps ensure that all funded activities have gone through the public comment process required of State Expenditure Plans.

Proposed Rule § 34.204 (Limitations on Activities)

This section described statutory limitations on activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Treasury received several comments suggesting that Treasury remove limitations here and clarify how grant recipients demonstrate the criteria in § 34.204(b).

Treasury has deleted this section and moved its provisions to § 34.803 of the Interim Final Rule, so that they apply to all five components of the Act. This change, along with minor wording changes, makes the regulation consistent with section 1607 of the Act. The limitations cannot be removed entirely from the Interim Final Rule because they are statutorily required. There is not a bright-line test for documenting that an acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands. However, the documentation required may well be useful for other purposes, such as demonstrating that an activity is being carried out in the Gulf Coast region. Treasury will consider issuing further guidance if needed.

Interim Final Rule § 34.204 (Limitations on Administrative Costs and Administrative Expenses)

This section implements the three percent cap on administrative costs and administrative expenses. The proposed rule used different methods for calculating the cap on administrative costs and expenses, because the Gulf Coast States, coastal political subdivisions, and coastal zone parishes

receive their funds episodically through grants. Measuring costs on an individual grant basis is easier to monitor. The Council, however, receives its funds through an annual apportionment from OMB. Treasury received several comments seeking an explanation of this section.

The Interim Final Rule contains the same method for calculating the Council's and NOAA's administrative expenses. This method gives the Council and NOAA some flexibility to incur administrative expenses above three percent during a start-up period, so long as the total does not exceed three percent of amounts received by the end of the fourth, or most recent, fiscal year, whichever is later. For the sake of consistency, Treasury has amended the language applying to NOAA in § 34.604 of the Interim Final Rule to be consistent with language applying to the Council.

Some comments questioned why the cap applies to administrative expenses and costs attributable to staff, when the statute is silent on this point. Treasury has clarified the rule by removing the reference to staff. The regulation defines ''administrative expenses'' and ''administrative costs.'' To the extent that staff costs are captured by these definitions, they are subject to the three percent cap.

Other comments questioned why the three percent cap applies to funds received under the Spill Impact Component. The Act states that the three percent cap applies to amounts received by a Gulf Coast State under section 311(t) of the Federal Water Pollution Control Act, which includes the Direct Component, Comprehensive Plan Component, and Spill Impact Component. See 33 U.S.C. 1321(t)(1)(B)(iii).

Several comments asked whether the three percent cap applies to subawards that state and local governments make under the Direct Component, Comprehensive Plan Component, or Spill Impact Component. Treasury interprets the Act to impose a cap based on amounts that Gulf Coast States, coastal political subdivisions, and coastal zone parishes receive directly from Treasury, the Council, or a Federal agency designated by the Council to issue grants. The cap does not apply to the administrative costs of subrecipients. These costs will be governed by general requirements in OMB's Uniform Guidance.

Some comments asked how the cap on administrative costs affects a state's negotiated indirect cost rate. The cap may reduce an award for the indirect costs of a state, county, or parish, depending on the circumstances. The amount of the cap must be calculated for each grant, and will equal three percent of all funds a state, county, or parish receives in that grant. If the amount of the cap is greater than the indirect costs of a state, county, or parish, no reduction is needed. If indirect costs exceed the administrative cost cap, there are two options. The state, county, or parish can reduce its claim for indirect costs to an amount at or below the cap. Alternatively, the state, county, or parish can demonstrate that its administrative costs—a subset of all indirect costs—do not exceed the cap. Treasury will issue guidance, as necessary, to resolve indirect cost questions.

The Interim Final Rule applies the three percent cap on administrative costs to amounts received under an award. Treasury has amended § 34.204(a) to clarify that the three percent limit will be applied to the total amount received under each award, not to amounts received in individual fiscal years. Administrative and other costs may be monitored throughout the award period, however, by the Federal awarding agency.

The Interim Final Rule does not include a cap on administrative costs for the Centers of Excellence Research Grants Program, because the Act does not include one. In the absence of a statutory cap, the general rule is that all costs charged to a Federal award must be ''necessary and reasonable for performance of the Federal award and be allocable thereto'' under the principles in OMB's Uniform Guidance. 2 CFR 200.403(a). The Uniform Guidance lists other factors as well. Whether a state's administrative costs are allowable under the Centers of Excellence Research Grants Program will be measured against the standards in the Uniform Guidance.

Treasury has moved a provision regarding the Alabama Gulf Coast Recovery Council to § 34.302(a) of the Interim Final Rule, and clarified its meaning. The Act states that ''Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.'' 33 U.S.C. 1321(t)(1)(F). Treasury interprets this requirement to govern who performs duties for the Alabama council, not just to limit how the Alabama council spends RESTORE Act funds.

Interim Final Rule § 34.205 (Council's Audited Financial Statements and Audits)

This section describes an auditing requirement for the Council. The provision regarding audits by the Treasury Inspector General has been clarified to be consistent with the Act.

Subpart D—Gulf RESTORE Program—Direct Component

Section 34.300 (General)

This section introduces a subpart on the Direct Component, and states that funds provided to the Gulf Coast States, Florida counties, and Louisiana parishes will be in the form of grants.

Section 34.301 (Responsibility for Administration)

This section states that Treasury will be the Federal awarding agency for Direct Component grants. Editorial changes have been made for clarity.

Section 34.302 (Allocation of Funds)

This section describes how funds will be allocated between Alabama, Florida counties, Louisiana state government and parishes, Mississippi, and Texas. Treasury received comments relating to the shares allocated to the Florida counties and the Louisiana parishes.

The Act allocates funds to 15 nondisproportionately impacted counties in Florida according to a weighted formula, and a share to 8 disproportionately affected counties. The Act did not state each county's specific share. Treasury's proposed rule stated that Treasury would divide funds among the eight disproportionately affected counties according to the formula mutually agreed upon by the counties and included in the Multiyear Implementation Plan submitted by each county. The proposed rule did not further specify the share allocated to each nondisproportionately impacted county.

Treasury received several comments from the Florida counties regarding their shares. The 23 counties have formed a consortium under Florida law, called the Gulf Consortium. According to a comment submitted by the Gulf Consortium, the consortium is a public entity that adheres to Florida's public records and public meeting requirements, and provides reports to the Florida Auditor General and Florida's Chief Financial Officer. The Gulf Consortium states that the eight disproportionately affected counties have agreed upon a formula, which distributes 20 percent among the counties equally, and 80 percent based on oiled shoreline, per capita sales tax

collections, population and distance from the Deepwater Horizon oil rig. Treasury accepts the counties' allocation formula; however, the proposed calculation only distributes 99.997 percent of the counties' share. In order to distribute the full amount, Treasury added a proportionate amount of the difference between 99.997 percent and 100 percent to each county's share, and rounded the result to nine decimal places.

The Gulf Consortium also proposed a specific allocation for the 15 nondisproportionately impacted counties. This allocation uses the 2010 population census, the per capita sales tax collections for 2012, and data from NOAA for the distance to the Deepwater Horizon oil rig. Treasury agrees that these data sources are appropriate, and that the methodology used is reasonable. However, the proposed allocation adds up to 100.16 percent of the nondisproportionately impacted counties' share. In order to distribute the correct amount, Treasury subtracted a proportionate amount of the difference between 100.16 percent and 100 percent from each county's share, and rounded the result to three decimal places. The resulting shares are stated in the Interim Final Rule.

The proposed rule requested comments on the best methodology for determining the allocation for the Louisiana parishes. The Act says that the parish allocation should be determined according to 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. 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 several 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 factors should be weighed, identify an authoritative source for the data, or provide a statutory basis for applying these new criteria.

Treasury has published a separate Notice of Proposed Rulemaking addressing these comments. In that notice, Treasury proposes an allocation for each of the eligible Louisiana parishes, to be incorporated into § 34.302(e). Treasury will consider any public comments on the allocation to Louisiana parishes before issuing a final rule.

Section 34.303 (Application Procedure)

This section describes how to apply for grants under the Direct Component. Treasury requires that applicants submit a Multiyear Implementation Plan describing the activities they intend to fund, and a grant application for each activity. Applicants must publish the Multiyear Implementation Plan for public review and comment before submitting it to Treasury. The Multiyear Implementation Plan and grant application serve related but different purposes. Requirements for the Multiyear Implementation Plan are designed to help applicants plan strategically, and to involve the public in the process of selecting activities. Treasury will use the grant application to determine whether proposed activities comply with requirements in the Act and these regulations, and to prepare an enforceable grant agreement that meets requirements in OMB's Uniform Guidance.

Treasury received many comments about the grant application process. Several comments stated that the rule should allow applicants to develop Multiyear Implementation Plans incrementally, and to modify them over time. Other comments recommended that Treasury collect additional information, in order to identify an activity's potential environmental, social, and economic effects, as well as conflicts with projects funded from other sources. Some comments expressed concerns about the adequacy of the public comment process. Additional comments requested that applicants give assurances about an activity's environmental benefits, and about how applicants will monitor projects. Other comments asserted that the proposed rule required too much information.

Treasury has revised the proposed rule to address public comments. The Interim Final Rule clarifies that Multiyear Implementation Plans can be amended and prepared incrementally. With litigation ongoing and the ultimate size of the trust fund still unknown, applicants will be allowed to adjust their plans to accommodate new information. The Interim Final Rule clarifies that funding is available for preparing Multiyear Implementation Plans. The Interim Final Rule also extends the public comment period to a minimum of 45 days, and requires applicants to make their Multiyear Implementation Plans available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. Applicants will need to consider the methods most appropriate to obtain broad-based participation, such as accessible public meetings, presentations in languages other than English, and postings on the Internet. Other editorial changes were made for clarity.

Section 34.304 (Grant Award Process)

This section states that Treasury will execute a grant agreement with the recipient after determining that the Multiyear Implementation Plan and application meet the requirements of the Act and these regulations. Editorial changes have been made for clarity.

Section 34.305 (Use of Funds)

This section generally describes how funds can be used. Treasury has amended the proposed rule in several respects in response to comments. A sentence in § 34.305(a) regarding unexpended funds has been removed as unnecessary. Grant recipients should refer to OMB's Uniform Guidance at 2 CFR 200.343 for more detailed requirements concerning the closeout of grants. Treasury has also added a new provision at § 34.305(c) regarding a grant recipient's ability to issue subawards. Under this provision, a Gulf Coast State, coastal political subdivision, or coastal zone parish that proposes to issue subawards must demonstrate its ability to manage and monitor these subawards in compliance with Federal law and policies on grants. For requirements applying to the monitoring and management of subrecipients, see OMB's Uniform Guidance at 2 CFR 200.330–200.332.

Several comments addressed the topic of contracting preferences, which are discussed in § 34.305(b). Comments asked for clarification on whether Federal, state, or local procurement rules will apply to grant recipients. Comments also recommended that Treasury include local or special hiring preferences for all five components as a means of achieving the goals of the Act.

OMB's Uniform Guidance has an extensive discussion of the administrative rules that apply to procurements under a Federal award. See 2 CFR 200.317–200.332. In general, states will use the same policies and procedures that apply to procurements using non-Federal funds, with certain narrow exceptions. Other non-Federal entities, including the Florida counties and Louisiana parishes and subrecipients of states, will use their own documented procurement procedures reflecting applicable state

and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards in the Uniform Guidance. 2 CFR 200.317.

The Act discusses geographic preferences for contracts in only two places. In the Direct Component, the Act allows a Gulf Coast State or coastal political subdivision to ''give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.'' 33 U.S.C. 1321(t)(1)(K). The Act requires the Council to develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan ''that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State. . . .'' 33 U.S.C. 1321(t)(2)(C)(vii)(V). Because the Act does not include geographic preferences for other components, the Interim Final Rule does not either.

OMB's Uniform Guidance makes clear that geographic preferences are allowed only when permitted by Federal law. The Uniform Guidance provides in part, that the non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. 2 CFR 200.319(b). OMB's Uniform Guidance does encourage, however, non-Federal entities to take ''all necessary steps'' to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are offered contracts when possible. The Uniform Guidance has more information at 2 CFR 200.321.

Sections 34.306 (Reports), 34.307 (Recordkeeping), 34.308 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. Some editorial changes were made to conform to the terms used in OMB's Uniform Guidance, which has a robust discussion of these topics.

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

Section 34.400 (General)

This section introduces the subpart discussing the Comprehensive Plan Component.

Section 34.401 (Responsibility for Administration)

This section generally describes the Council's responsibility for administering the Comprehensive Plan Component and certain requirements in the Act. Editorial changes have been made for the sake of clarity.

Section 34.402 (Grant Administration)

This section broadly describes the Council's responsibility to establish an application procedure and grant award process. Several comments on the proposed rule requested that Treasury provide more direction to the Council concerning grant administration. The Council, an independent Federal entity, has a great deal of discretion under the Act in its choice of projects and programs, as well as the manner in which these projects and programs are carried out. The Act requires the Council to assign projects and programs to its member states and Federal agencies. Without standards to govern how its members carry out their responsibilities, there is potential for inconsistent application of the Act and OMB's Uniform Guidance, as well as potential difficulties in compliance monitoring after award. For this reason, the Interim Final Rule requires the Council to develop standards for administering grants under the Comprehensive Plan Component, and to make these standards publicly available.

Section 34.403 (Use of funds)

This section generally states the requirements for funding activities under the Comprehensive Plan Component.

Sections 34.404 (Reports), 34.405 (Recordkeeping), 34.406 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. OMB's Uniform Guidance has a robust discussion of each of these topics.

Subpart F—Gulf RESTORE Program—Spill Impact Component

Section 34.500 (General)

This section introduces the subpart discussing the Spill Impact Component, and states that funds will be made available as grants.

Section 34.501 (Responsibility for Administration)

This section states that the Council is responsible for awarding and administering grants under this subpart. A sentence regarding compliance monitoring has been moved to the section on grant administration.

Section 34.502 (Allocation of Funds)

This section states that the Council will allocate amounts to the Gulf Coast States through regulations they will publish.

Section 34.503 (State Expenditure Plans)

This section describes the content of State Expenditure Plans and which entities will prepare them. Treasury received several comments on this section. Comments suggested that requirements in this section be more consistent with those for Multiyear Implementation Plans under the Direct Component. State entities requested that funding be available to develop these plans. Public interest groups also sought opportunities for public comment on these plans.

The Interim Final Rule makes several changes to the requirements for State Expenditure Plans. The rule is more explicit about the content of these plans, and now requires states to make their plans available for public review and comment before submitting them to the Council for approval. As in the Direct Component, the public comment process can help states select projects and plan strategically to use RESTORE Act funds. The plans can be incremental and modified at a later date, to provide the states with flexibility. The Interim Final Rule requires the Council to develop requirements specifying when modifications to a State Expenditure Plan require the Council's approval. Other clarifying changes have also been added to the regulation.

A clarifying change has also been made to the restrictions on infrastructure spending. The Act limits the amounts that can be spent on infrastructure, unless the State Expenditure Plan has required certifications. The Interim Final Rule clarifies that the 25 percent limit applies to the amount the state spends, not to the amount a state proposes to spend in its plan. Because a state may not execute all the projects in its plan, the original language did not carry out the statutory intent of limiting actual expenditures.

Section 34.504 (Grant Administration)

This section generally describes the Council's responsibility to establish policies and procedures for administration of the grants it awards, and to make these policies and procedures publicly available. The Interim Final Rule deletes a sentence that requires a state's grant application to demonstrate all the elements of the State Expenditure Plan to the satisfaction of the Federal grant

administrator. While the Federal awarding agency cannot proceed with a grant if it has grounds to believe that the underlying facts are inaccurate, requiring a secondary review of the State Expenditure Plan after the Council has approved it was redundant.

Section 34.505 (Use of Funds)

This section generally describes the requirements applying to expenditures under the Spill Impact Component.

Sections 34.506 (Reports), 34.507 (Recordkeeping), 34.508 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. OMB's Uniform Guidance has a robust discussion of these topics.

Subpart G—NOAA RESTORE Act Science Program

Section 34.600 (General)

This section introduces requirements for the NOAA RESTORE Act Science Program.

Section 34.601 (Responsibility for Administration)

This section generally describes the responsibilities of NOAA and the United States Fish and Wildlife Service for administering this component. Treasury received several comments on this subpart. One comment recommended that Treasury develop guidelines and procedures for NOAA to use when making grant applications and monitoring compliance. Another comment proposed that NOAA use a science-based, competitive process for selecting grant recipients, and that all research findings initiated through the program be publicly accessible and released in a timely manner. A third comment encouraged NOAA to engage with underserved, environmental justice populations by working with community-based organizations.

The Act gives NOAA wide discretion in using RESTORE Act funds, which it may use to fund work through grants, cooperative agreements, contracts, and interagency agreements. Treasury's Interim Final Rule preserves this discretion. NOAA currently plans to award grants and cooperative agreements through its National Center for Coastal Ocean Science within the National Ocean Service. This Center has administered large regional ecosystem science initiatives using competitive processes for more than two decades.

As planned, the science-based, competitive process for selecting successful applicants will include three steps. First, NOAA intends to screen all applications for consistency with the NOAA RESTORE Act Science Framework. Second, NOAA intends to screen applications to ensure they meet the minimum requirements that are spelled-out in the federal funding opportunity. Next, eligible proposals will enter the review process, which may include mail reviews by scientific experts in the field prior to being reviewed by a panel of 5 to 10 individuals with the needed subject matter expertise. NOAA intends to screen all mail and panel members for conflicts of interest. Ratings will be compiled by the program manager, along with a comprehensive written justification for selecting proposals recommended for funding. These recommendations will travel along a supervisory approval chain to the selecting official for final approval.

Treasury has no compliance role with respect to NOAA's program, other than functions reserved to the Treasury Inspector General. NOAA reports that it plans to use program managers to ensure that the teams of investigators stay on track with milestones, progress reporting and other measures of project performance. Through comprehensive oversight, NOAA anticipates a high rate of return for complex projects that advance knowledge and predictive capabilities for management and restoration of ecosystems.

The Interim Final Rule also does not prescribe how NOAA should engage with the public. NOAA has informed Treasury that it is working with the U.S. Fish and Wildlife Service to conduct a broad set of engagement activities to connect with stakeholders, including community-based organizations throughout the Gulf. Thus far, NOAA has invited the public to in-person events as well as virtual meetings. NOAA plans to connect, as appropriate, with community organizations serving underserved and environmental justice populations in a manner that aligns with the Commerce Department's environmental justice strategy. NOAA also intends to seek input from researchers at institutions of higher education throughout the Gulf of Mexico region, including institutions that focus on the needs of under-served communities. NOAA expects to provide the public with timely access to environmental data and information that are collected and created using RESTORE Act funds, typically no later than two years after the data are collected or created, except where limited by law, regulation, policy or by security requirements.

Further information about the NOAA RESTORE Act Science Program is available at *http://restoreactscienceprogram.noaa.gov/.*

Section 34.602 (Use of Funds and Eligible Activities)

This section describes the activities that can be funded using amounts from the trust fund. Treasury has amended this section to capture all activities permitted by section 1604 of the Act.

Section 34.603 (Limitations on Activities)

This section describes limitations on the activities NOAA can fund under the Act. The Interim Final Rule has not changed this section from the proposed rule.

Section 34.604 (Limitations on Administrative Expenses)

This section describes how the statutory cap is applied to NOAA's administrative expenses, as well as NOAA's ability to seek reimbursement from the trust fund for administrative expenses incurred before the effective date of Treasury's regulations. A sentence from § 34.604(b) has been deleted to be consistent with the cap applying to the Council's administrative expenses.

Sections 34.605 (Reports), 34.606 (Recordkeeping), 34.607 (Audits)

These sections describe general requirements for reports, recordkeeping, and audits. Editorial changes have been made for clarity and consistency with OMB's Uniform Guidance.

Subpart H—Centers of Excellence Research Grants Program

Section 34.700 (General)

This section introduces the subpart containing requirements for the Centers of Excellence Research Grants Program.

Section 34.701 (Responsibility for Administration)

This section states that Treasury is responsible for administering grants to the Gulf Coast States. Treasury has developed an application process for these grants, which is consistent with requirements in OMB's Uniform Guidance.

Section 34.702 (Allocation of Funds)

This section identifies the state entities which can apply for grants from Treasury, and the percentage of funds they are entitled to receive. Consistent with the Act, the proposed rule stated that Florida's share would be administered by a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission. Treasury

received comments urging that the Florida Institute of Oceanography be designated in the final rule as the consortium mentioned in the statute. The statute does not identify the consortium, but it does say that the consortium must include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission. According to their comment on the proposed rule, these agencies agree that the Florida Institute of Oceanography is the proper entity. Given that no other entity could fit the statutory description without the cooperation of these agencies, the Interim Final Rule states that the Florida Institute of Oceanography is Florida's representative for the Centers of Excellence Research Grants Program.

Section 34.703 (Application Procedure)

This section generally describes the demonstration a Gulf Coast State must make when it applies for grants. Treasury received several comments concerning the selection of Centers of Excellence.

Several comments pertained to states that announced their selection in advance of Treasury's proposed rule. Some comments proposed that Treasury should allow these selections to stand. Although the Act requires states to issue competitive grants, some comments asserted that the competition requirements should apply to how the centers award research funding. Other comments proposed additional criteria for selecting the Centers of Excellence, including the centers' geographic location and whether they partner with industry.

Treasury's regulations must implement the language of the Act. Section 1605(a) of the Act makes funds available ''to establish centers of excellence to conduct research only on the Gulf Coast Region. . . .'' Later, section 1605(c) makes clear that states must make funds available through competitive grants to nongovernmental entities and consortia in the Gulf Coast region, including public and private institutions of higher education, and ''give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise'' in the disciplines mentioned in the Act. The Act gives no latitude to excuse states from using a competitive process when they award grants to establish centers of excellence.

Additional comments requested that Treasury clarify the selection criteria in the rule. One comment urged that entities and consortia have priority if they agree to partner with industry. Another comment requested additional details on the weight states should give to applicants having a cross-section of participants. Other comments stated that the connection required to the Gulf Coast region was unclear, and suggested instead that entities headquartered in and primarily operating in the Gulf Coast region be designated as Centers of Excellence. Another comment asked for clarification that a state may select one center of excellence, and that the states receive equal shares.

The Interim Final Rule does not add any new eligibility criteria for Centers of Excellence. The Act gives states discretion to decide what information to request from institutions applying to become Centers of Excellence, as well as discretion on the science, technology, and monitoring projects to fund. Accordingly, the Interim Final Rule also gives states discretion in these areas. A state also has discretion in choosing the location of a Center of Excellence. While states must use a competitive selection process that complies with the Act, they do have discretion regarding the geographic location of Centers of Excellence. Accordingly, Treasury has revised the proposed rule to remove the sentence on geographic location.

Treasury has also amended the proposed rule to require more details in state grant applications. The new requirements are designed to measure a state's program against the statutory criteria.

Section 34.704 (Use of Funds and Eligible Activities)

This section describes the activities that can be funded from amounts made available under the Centers of Excellence Research Program. This provision makes grants available to establish Centers of Excellence. Treasury interprets the scope of eligible activities to include the founding of Centers of Excellence, as well as research into the disciplines identified in section 1605(d) of the Act.

Treasury received comments on how the Centers of Excellence should award grants. One comment, made on behalf of several research institutions, suggested that Centers of Excellence prepare a five year progress report for review by independent experts, who would recommend whether the Center should continue or a new competition be held. Another comment requested that the Centers engage with underserved, environmental justice populations.

Treasury is not incorporating performance requirements into its regulations at this time. Because of the discretion afforded states under this program, there may be several approaches for measuring and monitoring the success of grants. Treasury will expect states to identify appropriate measures for defining and measuring success of the Centers of Excellence, as well as appropriate engagement with affected communities.

Section 34.705 (Ineligible Activities)

This section states that activities that are not authorized under § 34.704 are ineligible for funding.

Sections 34.706 (Reports), 34.707 (Recordkeeping), 34.708 (Audits)

These sections generally describe the reporting, recordkeeping, and auditing requirements for the Centers of Excellence Research Grants Program. OMB's Uniform Guidance provides additional details about these requirements. Editorial changes have been made for consistency with the Uniform Guidance.

Subpart I—Agreements

Section 34.800 (General)

This section introduces the subpart that contains requirements pertaining to grants awarded by the Council, NOAA, Gulf Coast States, coastal political subdivisions, and coastal zone parishes. It also describes Treasury's authority to inspect records and the authority of the Treasury Inspector General. Treasury has revised this section to more accurately describe the content of this subpart.

Section 34.801 (Grant Agreements)

This section states that grant agreements must conform to applicable law and Federal policies pertaining to grants.

Section 34.802 (Certifications)

This section includes certifications that must be in grant agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component. In response to comments, the Interim Final Rule clarifies who can sign a certification. The certification pertaining to consideration of public comments has been amended for consistency with the Act. The rule also includes a revised certification pertaining to procurements. The proposed rule required grant recipients to certify that they had followed state procurement laws. While recipients are generally required to comply with state procurement laws, the Uniform Guidance contains exceptions. Recipients should refer to 2 CFR 200.317–200.326 for more specific information.

Section 34.803 (Conditions)

This section contains conditions that apply to every grant agreement. The list of conditions is not comprehensive. As noted throughout the regulation, all grant agreements must comply with Federal laws and policies on grants, which include the requirements in OMB's Uniform Guidance.

Treasury has deleted a condition stating that grant recipients must deposit all grant funds into accounts dedicated for that purpose because that condition is inconsistent with OMB's Uniform Guidance. At 2 CFR 200.305(b)(7)(1), the Uniform Guidance precludes Federal awarding agencies from requiring separate depository accounts for funds provided to non-Federal entities. The Uniform Guidance does require non-Federal entities to account for the receipt, obligation, and expenditure of funds. Treasury's regulation retains that requirement as a condition for all grant agreements.

Treasury received several comments pertaining to the condition on program income. The Interim Final Rule continues to provide that grant recipients track program income, but does not discuss how program income should be used. Grant recipients should refer to OMB's Uniform Guidance for further information on the use of program income. In addition to this change, minor editorial changes have been made for consistency with the Uniform Guidance.

Proposed Rule § 34.804 (Records and Reporting)

This section in the proposed rule has been deleted. Section 34.804(a) in the proposed rule gave Treasury broad access to the Council's and NOAA's records and personnel for purposes of assessing compliance with their own obligations under the Act. Because the Act does not authorize Treasury to take enforcement actions with respect to the Council or the NOAA RESTORE Act Science Program, § 34.804(a) went further than necessary. A more narrowly tailored provision now appears in the section addressing Treasury's remedies for noncompliance. Treasury has also deleted § 34.804(b) in the proposed rule. This provision described a reporting requirement for grants lasting more than three years. Because the Federal awarding agency already has authority to require reports as necessary, this requirement was redundant of other authorities in the rule.

Interim Final Rule § 34.804 (Noncompliance)

This section describes Treasury's authority to withhold funds from the Gulf Coast States, coastal political subdivisions, and coastal zone parishes under the Direct Component, Comprehensive Plan Component, and Spill Impact Component. This section implements authorities in section 1603 of the Act (33 U.S.C. 1321(t)(1)(G) and (H)). An introductory statement in the proposed rule was unnecessary and has been deleted.

Treasury received several comments on its compliance functions. Several comments noted overlapping compliance roles for Treasury, the Treasury Inspector General, and the Council. Other comments requested that Treasury develop a review or grievance procedure for the public to use when funds are not being used in compliance with the Act. Comments also asked Treasury to assess penalties for violations of the Act.

Under the Uniform Guidance, the Federal awarding agency has primary responsibility for overseeing compliance by the recipient. If the recipient, acting as a ''pass-through entity,'' issues a subaward under the Act, the recipient is responsible for overseeing compliance by the subrecipient. If a non-Federal entity fails to comply with the award agreement, the Federal awarding agency or pass-through entity may impose special conditions, temporarily withhold cash payments, disallow costs, suspend or terminate the Federal award, and take other actions. See 2 CFR 200.338. All of these remedies are available to Treasury, the Council, and NOAA when they are awarding funds under the Act, and to the states and other non-Federal entities when they are the pass-through entity.

Congress gave Treasury supplemental compliance responsibilities with respect to a grant recipient's use of funds under the Comprehensive Plan Component and the Spill Impact Component. Treasury can withhold funds under appropriate circumstances, but Treasury has no ability to assess monetary penalties under these or the other components. Treasury's authorities, described in section 1603 of the Act (33 U.S.C. 1321(t)(1)(G) and (H)), do not apply to grants issued by NOAA. Treasury anticipates exercising these authorities only if the entities primarily responsible for compliance under the Uniform Guidance fail to act. Public concerns about compliance with the Act should be referred, in the first instance, to the Federal awarding agency and pass-through entity for resolution.

The Treasury Inspector General will also receive reports from the public about violations of law and information concerning possible waste, fraud, and abuse. Congress gave the Treasury Inspector General broad authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under the Act. Nothing in the Interim Final Rule limits this authority, or constrains the public's ability to bring their concerns to the Treasury Inspector General's office.

Section 34.806 (Treasury Inspector General)

This section is new to the Interim Final Rule, and restates the Treasury Inspector General's authority under the Act.

Audits

Treasury received several comments concerning audits. Some comments sought clarity about the scope and timing of required audits, including whether the Single Audit Act will apply. Other comments suggested using state auditors and raising the ceiling on administrative costs to pay for audits. Several comments also asked Treasury to clarify when it would use its audit authority, and how audits would be coordinated with the Treasury Inspector General and the Council.

The Act does not describe specific audit requirements. Rather, section 1602 of the Act authorizes Treasury to identify ''auditing requirements to ensure that amounts in the trust fund are expended as intended. . . .'' The general audit requirements for the Act are described in OMB's Uniform Guidance, 2 CFR 200.500–200.521. These provisions describe not only audit requirements applying to grant recipients, but also requirements that apply to the Federal awarding agency. Treasury (including the Treasury Inspector General) and the Federal awarding agency may conduct or arrange for additional audits and evaluations of Federal awards. 2 CFR 200.503. If additional audits are needed, the Uniform Guidance encourages Federal agencies to minimize duplication and to build upon work performed by other auditors. 2 CFR 200.503(b). Because these audits and evaluations may depend on risks associated with individual awards, Treasury's regulations do not address them in detail.

Audit services can be an allowable cost under a Federal award, as described in 2 CFR 200.425. Treasury does not anticipate that the cap on administrative costs will limit a grant recipient's ability to perform required audits, given the definition of *administrative costs* and the provisions at 2 CFR 200.503(d), concerning the cost of audits not required under the Uniform Guidance.

III. National Environmental Policy Act

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and its implementing regulations, 40 CFR Parts 1500–1508, establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Under NEPA, Federal agencies are required to prepare an environmental analysis for ''Federal actions.'' 42 U.S.C. 4332(C); see also 40 CFR 1508.18(a) and (b). The purpose of NEPA review is to help public officials make decisions with an understanding of their environmental consequences. An action under consideration must be ''potentially subject to Federal control and responsibility.'' 40 CFR 1508.18. If the Federal agency has no discretion to exercise and no decision to make, and its action is administrative or ministerial, NEPA review would not affect the decision and is therefore not required.

Treasury received several comments about NEPA's application to eligible activities. Comments requested guidance about whether and how NEPA applies to Multiyear Implementation Plans and State Expenditure Plans. Several comments also expressed concern about whether NEPA compliance would delay the completion of plans and the issuance of grants.

The Interim Final Rule does not specifically address NEPA. The Federal agency awarding the funds is primarily responsible for determining how NEPA applies to its actions, and Treasury is not the awarding agency for a majority of funds made available under the Act. The Council has completed a programmatic environmental assessment under NEPA for the Initial Comprehensive Plan, and has begun developing NEPA compliance procedures for projects and programs it decides to fund. The Council is also developing processes to further engage with the public. The Council will determine how NEPA applies to its activities.

Treasury is the Federal awarding agency for grants under the Direct Component and Centers of Excellence Research Grants Program. Treasury will soon publish agency-wide NEPA policy and procedures in the **Federal Register** for public comment. At this time, however, Treasury does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review. Other Federal actions connected with activities funded through a RESTORE Act grant, such as issuance of a permit, may require NEPA review by the agency issuing the permit. Treasury's view is based on its statutory role for the administration of the Direct Component and Centers of Excellence Research Grants Program.

The RESTORE Act gives Treasury a very limited role in awarding grants. The Direct Component gives Treasury no role in project selection or design; these roles are given to Gulf Coast States, Florida counties, and Louisiana parishes. Treasury also has no role in *approving* Multiyear Implementation Plans. Treasury's limited role for the Centers of Excellence Research Grants Program is particularly evident in section 1605 of the Act, where Treasury is not mentioned at all. Treasury's role in awarding grants arises in part from its responsibility to establish procedures, and to identify conditions and certifications, necessary to ensure compliance with the Act. RESTORE Act section 1602(e); 33 U.S.C. 1321(t)(1)(E). Treasury's role also arises from its authority to withhold funds under 33 U.S.C. 1321(t)(1)(G) and (H) for non-compliance with the Act. Without explicit instructions in the Act about how to make grant awards, Treasury will review Multiyear Implementation Plans and grant applications to determine whether they satisfy financial and administrative requirements in the Act and these regulations, and apply the administrative requirements in OMB's Uniform Guidance. These are determined to be administrative and ministerial duties that do not require an environmental analysis under NEPA.

IV. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (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. In the preamble to the proposed rule, Treasury certified that this rule will not have a significant economic impact on a substantial number of small entities, and thus no initial regulatory flexibility analysis is required. While this 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. Treasury invited comments on this certification.

Treasury received comments on behalf of seven counties in Florida that will receive funds under the Direct Component and have populations of less than 50,000 people. According to the comments, the State of Florida recognizes these counties as ''fiscally constrained counties'' that have limited resources to meet requirements of a safe society. The comments observed that compliance with the rule will be costly, in relation to the budgets of these counties. The comments did not quantify the compliance costs.

While these seven counties provided many comments on the proposed rule, directly and through the Gulf Consortium, Levy County's comments provided the most detail about the regulations' cost. Levy County's situation may be representative of the other fiscally constrained counties. Levy County stated that its tax base is so low that it struggles to provide basic government services, and as a result, ''the County cannot afford to acquire staff or consultants with the expertise and educational background necessary to comply with the provisions of the Proposed Rule.'' [1] In particular, Levy County stated that it may not be able to hire people with expertise to develop the Multiyear Implementation Plan or grant application, or to develop and implement projects and programs. To address these needs, Levy County requested that Treasury make funding available for planning and administrative costs prior to the grant application stage, including funding to educate the public, form an advisory committee, develop a Multiyear Implementation Plan, and develop potential projects.

In general, the costs of developing plans and projects, and of complying with Federal grant requirements, arise from the Act and not Treasury's regulations. The Act makes funds available subject to conditions that include plans, public engagement, and financial controls. The counties, however, have considerable discretion in how they comply with these requirements, which enables them to control some of their costs. The Act also provides some latitude concerning when funds are made available. In response to these comments, Treasury has revised the rule to make grants available to develop Multiyear Implementation Plans, including related public engagement activities. These grants will include funds to cover

[1] Letter from Anne Bast Brown, Levy County Office of the County Attorney, to Dept. of the Treasury (Nov. 4, 2013) at 2–3 (available at *www.regulations.gov* under number Treas–DO–2013–0005–0016).

administrative costs. As noted elsewhere in this preamble, the Florida counties and other grant recipients may also negotiate reimbursement of pre-award costs, as described in OMB's Uniform Guidance. These measures will not reduce the counties' costs in complying with the Act, or exempt the counties from any legal requirement. Every grant recipient is expected to comply with the Act and other Federal requirements that apply to Federal awards. However, these measures do make funding available for allowable costs.

For these reasons, Treasury concludes that the rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The collections of information contained in the notice of proposed rulemaking were submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under control number 1505–0250. Treasury requested comments in the following areas:

- Whether the proposed collection[s] of information is necessary for the proper performance of the functions of the Treasury Department, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection[s] of information (see below);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology.

Treasury received comments concerning the content of Multiyear Implementation Plans and State Expenditure Plans and grant applications. Comments also requested more specific information about the reporting requirements stated in the rule. These comments, and resulting changes in the regulation, have been discussed in the section-by-section analysis in this preamble. Treasury received no comments on the accuracy of the burden assessments or suggestions for minimizing the burden of complying with the proposed collections of information.

The collections of information in this Interim Final Rule are in 31 CFR Part 34. This information is required to support applications for grants under the Act and monitor the use of RESTORE Act funds. Respondents will be recipients of these funds. For the Direct Component, recipients will be Alabama, certain Florida counties, Louisiana and certain Louisiana parishes, Mississippi, and Texas. For the Centers of Excellence Research Grants Program, recipients will be Alabama, the Florida Institute of Oceanography, Louisiana, Mississippi, and Texas.

	Direct component	Centers of Excellence Research Grants Program
Application—number of respondents	47	5
Application—frequency of responses	2	2
Application—burden hours per response	10	10
Application—total burden hours	940	100
Reports—number of respondents	47	5
Reports—frequency of responses	Quarterly	Quarterly
Reports—burden hours per response	3	3
Reports—total burden hours	564	60
Recordkeeping	4,700	500
Total burden hours	6,204	660

Estimated total annual burden hours for applications, reporting and recordkeeping: 6,864 hours for the Direct Component and the Centers of Excellence Research Grants Program. The Federal entities who administer the Comprehensive Plan Component, Spill Impact Component, and the NOAA RESTORE Act Science Program will submit their estimates separately to OMB. The public will have the opportunity to comment at that time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

This regulation is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. OMB has reviewed the regulation. If adopted, this rule may have an annual effect on the economy of $100 million or more. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

This rule deals with the transfer of amounts in the Gulf Coast Ecosystem Trust Fund. On March 21, 2013, $323,392,877 was deposited into the trust fund and invested in Treasury securities. A second deposit was made on March 5, 2014, in the amount of $329,641,425. The amount in the trust fund is expected to increase due to investments and additional deposits of civil penalties from ongoing litigation.

Description of Need for the Regulatory Action

The Act requires Treasury to establish procedures necessary for the deposit into, and expenditure of amounts from, the Gulf Coast Ecosystem Trust Fund. The Interim Final Rule implements those responsibilities. Included in this rulemaking are procedures for issuing grants to the Gulf Coast States, Florida counties, and Louisiana parishes, as well as reporting and auditing requirements. The procedures supplement responsibilities in other Federal laws and policy that apply to grants.

Affected Population

This rulemaking affects those entities in the five Gulf Coast States that are eligible to receive funding under the RESTORE Act. In general, funds will be made available to state and local

governments in the form of grants, and to Federal agencies through interagency agreements, for projects, programs, and activities they select within the broad parameters of the Act. Funds are also available to NOAA for a science program, and to the Council, a body comprised of state and Federal entities, for projects and programs the Council identifies in its Comprehensive Plan.

Under the Direct Component and Spill Impact Component, 65 percent of the trust fund is available to support projects, programs, and activities proposed by governmental entities in the five Gulf Coast States. The Act lists a broad range of eligible activities, including the restoration and protection of natural resources, mitigation of damage to fish and wildlife, and workforce development and job creation. State entities may apply to the Treasury Department for grant funds under the Direct Component, and to the Council for grant funds under the Spill Impact Component.

The Comprehensive Plan Component makes 30 percent of the trust fund, plus a portion of accrued interest, available to the Council to carry out activities in the Gulf Coast region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). The Council will identify the projects and programs it wants to fund in its Comprehensive Plan, and assign primary responsibility for them to its members. The Council will provide funds to the states in the form of grants and to agencies through interagency agreements, and may permit its Federal and state members to issue grants to or contract with nongovernmental entities.

The Act also makes 2.5 percent of the trust fund, plus a portion of accrued interest, available to NOAA for the NOAA RESTORE Act Science Program. In this program, NOAA may use funds to carry out research, observation, and monitoring to support the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico. NOAA may carry out these functions directly, transfer funds to the Gulf States Marine Fisheries Commission, and expend funds through grants, cooperative agreements, contracts, and interagency agreements.

The fifth component is the Centers of Excellence Research Grants Program. In this program, Treasury will issue grants to governmental entities in the five Gulf Coast States using 2.5 percent of the trust fund, plus a portion of accrued interest. The state entities will use the funds to issue their own competitive grants to establish centers of excellence. These centers will be nongovernmental entities and consortia in the Gulf Coast region, including public and private institutions of higher education. They will focus on science, technology, and monitoring in five disciplines described in the RESTORE Act.

Baseline

The Interim Final Rule helps implement the Act, which is generally focused on the environmental restoration and economic recovery of the Gulf Coast region. This region is an area in which the people, animals, minerals, land, and water are interconnected. The ecosystem and resources are vitally important to the United States economy, contributing about 30 percent of the nation's gross domestic product in 2009 (National Oceanic and Atmospheric Administration, 2010). The region provides more than 90 percent of the nation's offshore oil and natural gas production (US Information Agency, 2010) and one-third of the nation's seafood (National Marine Fisheries Service, 2010). The region also has significant recreation and tourism.

On April 20, 2010, the largest oil spill in United States history occurred, exacerbating the effects of previous natural disasters. Oil flowed unchecked for three months. The cause was an explosion of the *Deepwater Horizon,* an oil drilling rig in the Gulf of Mexico. Before the well was capped, millions of barrels of crude oil were released, closing tens of thousands of square miles of federal waters for fishing while contaminating hundreds of miles of shoreline, bayous, bays, and islands with oil and chemicals used during response activities. The released oil dispersed over Gulf waters, wildlife, and coasts, causing extensive damage to marine and wildlife habitats, fishing, and tourism.

This Interim Final Rule describes procedures concerning the expenditure of amounts from the trust fund, including compliance and auditing requirements. The amounts made available from the trust fund will continue efforts that provide for the long-term health of the ecosystems and economy of the Gulf Coast region. The Council, NOAA, and program grant recipients will determine how to advance these efforts using trust fund amounts.

D. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice and comment procedures before promulgation of regulations and a delay in effective date. See 5 U.S.C. 553(b). The APA allows agencies to dispense with notice and comment procedures when the agency finds that good cause exists under 5 U.S.C. 553(b) that such procedures would be unnecessary, impracticable, or contrary to the public interest.

The Department published a notice of proposed rulemaking requesting comment on the proposed rule on September 6, 2013. As explained earlier in this preamble, the Department is issuing this rule as an Interim Final Rule because it believes the rulemaking would benefit from additional public comment on previously proposed provisions as well as provisions adopted in this interim rule. Further, the Department believes that it would be contrary to the public interest to delay implementation of the rule pending further public comment because of the overwhelming public interest in making funds available under the Act.

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective 60 days after publication.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their 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. Treasury believes that the regulatory impact assessment provided in this preamble provides the analysis required by the Unfunded Mandates Reform Act.

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 amends 31 CFR subtitle A by adding new part 34 to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Subpart A—General Provisions

Sec.
34.1 Purpose.
34.2 Definitions.

Subpart B—Trust Fund

Sec.
34.100 The Trust Fund.
34.101 Investments.
34.102 Interest earned.
34.103 Allocation of funds.
34.104 Expenditures.
34.105 Waiver.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components

Sec.
34.200 General.
34.201 Eligible activities for the Direct Component.
34.202 Eligible activities for the Comprehensive Plan Component.
34.203 Eligible activities for the Spill Impact Component.
34.204 Limitations on administrative costs and administrative expenses.
34.205 Council's audited financial statements and audits.

Subpart D—Gulf RESTORE Program—Direct Component

Sec.
34.300 General.
34.301 Responsibility for administration—Direct Component.
34.302 Allocation of funds—Direct Component.
34.303 Application procedure—Direct Component.
34.304 Grant award process—Direct Component.
34.305 Use of funds—Direct Component.
34.306 Reports—Direct Component.
34.307 Recordkeeping—Direct Component.
34.308 Audits—Direct Component.

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

Sec.
34.400 General.
34.401 Responsibility for administration—Comprehensive Plan Component.
34.402 Grant administration—Comprehensive Plan Component.
34.403 Use of funds—Comprehensive Plan Component.
34.404 Reports—Comprehensive Plan Component.
34.405 Recordkeeping—Comprehensive Plan Component.
34.406 Audits—Comprehensive Plan Component.

Subpart F—Gulf RESTORE Program—Spill Impact Component

Sec.
34.500 General.
34.501 Responsibility for administration—Spill Impact Component.
34.502 Allocation of funds—Spill Impact Component.
34.503 State Expenditure Plans—Spill Impact Component.
34.504 Grant administration—Spill Impact Component.
34.505 Use of funds—Spill Impact Component.
34.506 Reports—Spill Impact Component.
34.507 Recordkeeping—Spill Impact Component.
34.508 Audits—Spill Impact Component.

Subpart G—NOAA RESTORE Act Science Program

Sec.
34.600 General.
34.601 Responsibility for administration—NOAA RESTORE Act Science Program.
34.602 Use of funds and eligible activities—NOAA RESTORE Act Science Program.
34.603 Limitations on activities—NOAA RESTORE Act Science Program.
34.604 Limitations on administrative expenses—NOAA RESTORE Act Science Program.
34.605 Reports—NOAA RESTORE Act Science Program.
34.606 Recordkeeping—NOAA RESTORE Act Science Program.
34.607 Audits—NOAA RESTORE Act Science Program.

Subpart H—Centers of Excellence Research Grants Program

Sec.
34.700 General.
34.701 Responsibility for administration—Centers of Excellence Research Grants Program.
34.702 Allocation of funds—Centers of Excellence Research Grants Program.
34.703 Application procedure—Centers of Excellence Research Grants Program.
34.704 Use of funds and eligible activities—Centers of Excellence Research Grants Program.
34.705 Ineligible activities—Centers of Excellence Research Grants Program.
34.706 Reports—Centers of Excellence Research Grants Program.
34.707 Recordkeeping—Centers of Excellence Research Grants Program.
34.708 Audits—Centers of Excellence Research Grants Program.

Subpart I—Agreements

Sec.
34.800 General.
34.801 Grant agreements.
34.802 Certifications.
34.803 Conditions.
34.804 Noncompliance.
34.805 Treasury Inspector General.

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

Subpart A—General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

(a) The Gulf RESTORE Program is authorized under section 311(t) of the Federal Water Pollution Control Act (33 U.S.C. 1221(t)), as amended by the RESTORE Act, and includes the following components:

(1) Direct Component (subpart D of this part), administered by the Department of the Treasury.

(2) Comprehensive Plan Component (subpart E of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(3) Spill Impact Component (subpart F of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(b) NOAA RESTORE Act Science Program (subpart G of this part) is administered by the National Oceanic and Atmospheric Administration.

(c) Centers of Excellence Research Grants Program (subpart H of this part) is administered by the Department of the Treasury.

§ 34.2 Definitions.

As used in this part:

Act or *RESTORE Act* means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Activity means an activity, project, or program, including research and monitoring, eligible for funding under the Act.

Administrative costs means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs may include costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to:

(1) Facilities;

(2) Eligible projects, programs, or planning activities; or

(3) Activities relating to grant applications, awards, audit requirements, or post-award management, including payments and collections.

Administrative expenses means those expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative

expenses do not include expenses that are identified specifically with, or readily assignable to:

(1) Facilities;

(2) Eligible projects, programs, or planning activities;

(3) Activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections;

(4) The Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments;

(5) The Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component;

(6) Preparation of reports required by the Act;

(7) Establishment and operation of advisory committees; or

(8) Collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem.

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Assignee means a member of the Gulf Coast Ecosystem Restoration Council who has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan through a grant or interagency agreement.

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the state level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury through grants to carry out the purposes of the Act.

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Federal Water Pollution Control Act means 33 U.S.C. 1251 *et seq.*

Gulf Coast Region means:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entity means a party that carries out the duties of a state for the Centers of Excellence Research Grants Program under § 34.702.

Infrastructure means the public facilities or systems needed to support commerce and economic development. These installations and facilities span a wide range, including highways, airports, roads, buildings, transit systems, port facilities, railways, telecommunications, water and sewer systems, public electric and gas utilities, levees, seawalls, breakwaters, major pumping stations, and flood gates. Infrastructure encompasses new construction, upgrades and repairs to existing facilities or systems, and associated land acquisition and planning.

Multiyear Implementation Plan means the plan submitted by entities eligible for funding directly from Treasury under the Direct Component, and described at § 34.303.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a program under the Act.

Planning assistance means data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under § 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities under § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under the Act. As used in these regulations, a recipient also includes a pass-through entity. The term recipient does not include subrecipients.

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component, and described at § 34.503.

Subrecipient means a non-Federal entity that receives a subaward from a recipient to carry out an activity under the Act.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B—Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. After these administrative and civil penalties have been deposited into the Trust Fund, the Trust Fund will terminate on the date all amounts owed to the Trust Fund have been returned to the Trust Fund, and all amounts have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program. Section 34.302 describes the allocation for each Gulf Coast State.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent for formula distribution to Gulf Coast States to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science Program.

(2) Twenty-five percent for the Centers of Excellence Research Grants Program.

(3) Fifty percent for the Comprehensive Plan Component of the Gulf RESTORE Program.

§ 34.104 Expenditures.

Subject to limitations in the Act and these regulations, amounts in the Trust Fund will be available for the direct and indirect expenses of eligible activities without fiscal year limitation. Recipients must minimize the time between receipt of funds and the disbursement of those funds for authorized expenses.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in the regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted that materially change a regulatory requirement.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Gulf RESTORE Program. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund amounts may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs must comply with administrative requirements and cost principles in applicable Federal law and policies on grants.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component must not be included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 U.S.C. 9509.

(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§ 34.201 and 34.203 and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Direct Component activities are carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant. Activities designed to protect or restore natural resources must be based on the best available science. All Direct Component

activities must be included in and conform to the description in the Multiyear Implementation Plan required by § 34.303.

(a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(b) Mitigation of damage to fish, wildlife, and natural resources.

(c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(d) Workforce development and job creation.

(e) Improvements to or on state parks located in coastal areas affected by the *Deepwater Horizon* oil spill.

(f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(g) Coastal flood protection and related infrastructure.

(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.

(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(j) Planning assistance. Eligible entities under § 34.202 may apply for planning assistance grants that are necessary to develop and submit the Multiyear Implementation Plan before the plan is submitted to Treasury.

(k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council may expend funds that are available under the Comprehensive Plan Component for eligible activities under 33 U.S.C. 1321(t)(2) and (3), including the following:

(a) The Council may expend funds to carry out activities in the Gulf Coast Region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). An activity selected by the Council is carried out in the Gulf Coast Region when, in the reasonable judgment of the Council, each severable part of the activity is primarily designed to restore or protect that geographic area. The Council must document the basis for its judgment when it selects the activity.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to implement, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

Activities eligible for funding under the Spill Impact Component must meet the eligibility criteria in § 34.201(a) through (k), as well as the following:

(a) The activities must be included in and conform to the description in a State Expenditure Plan required in § 34.503 and approved by the Council. State entities may apply for a grant from the total amount allocated to that state under the Spill Impact Component before the Council has approved the State Expenditure Plan to fund eligible activities that are necessary to develop and submit that plan.

(b) The activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.

(c) Activities listed in § 34.201(a) through (g) are eligible for funding from the Spill Impact Component to the extent they are carried out in the Gulf Coast Region. For purposes of this component, an activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity developing the State Expenditure Plan under § 34.503, each severable part of the activity is primarily designed to restore or protect that geographic area. State Expenditure Plans must include a demonstration that activities in the plan will be carried out in the Gulf Coast Region.

§ 34.204 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish in a grant from Treasury under the Direct Component, or in a grant from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in Federal law and policies on grants.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

§ 34.205 Council's audited financial statements and audits.

(a) Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(b) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(c) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(d) The Treasury Inspector General may conduct audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D—Gulf RESTORE Program—Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

§ 34.301 Responsibility for administration—Direct Component.

Treasury is responsible for awarding and administering grants and grant agreements under this subpart. Treasury will develop and apply policies and procedures consistent with the Act and Federal law and policies on grants. Treasury also will establish and implement a program to monitor compliance with its grant agreements.

§ 34.302 Allocation of funds—Direct Component.

The amounts made available in any fiscal year from the Trust Fund and

allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate. All administrative duties of the Alabama Gulf Coast Recovery Council must be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Each disproportionately affected county's share is as follows: Bay County, 15.101453044%; Escambia County, 25.334760043%; Franklin County, 8.441253238%; Gulf County, 6.743202296%; Okaloosa County, 15.226456794%; Santa Rosa County, 10.497314919%; Wakulla County, 4.943148294%; and Walton County, 13.712411372%.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Each nondisproportionately impacted county's share is as follows: Charlotte County, 5.162%; Citrus County, 4.692%; Collier County, 7.019%; Dixie County, 3.484%; Hernando County, 4.982%; Hillsborough County, 13.339%; Jefferson County, 3.834%; Lee County, 8.776%; Levy County, 3.894%; Manatee County, 6.809%; Monroe County, 8.297%; Pasco County, 7.079%; Pinellas County, 11.002%; Sarasota County, 7.248%; and Taylor County, 4.383%.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes.

(f) No parish will receive funds until the parish chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the state's Coastal Master Plan approved by the Louisiana legislature.

(g) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(h) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

§ 34.303 Application procedure—Direct Component.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury will develop an application process for grants available under this subpart that is consistent with the Act and Federal policies on grants. At a minimum, the procedure will include the following:

(a) Before an eligible entity may receive a Direct Component activity grant, the grant applicant must submit a Multiyear Implementation Plan describing each activity for which it seeks funding under the Direct Component. Applications to fund preparation and amendment of the Multiyear Implementation Plan are exempt from this requirement.

(b) For each activity, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements;

(3) Location;

(4) Budget;

(5) Milestones;

(6) Projected completion dates;

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region impacted by the *Deepwater Horizon* oil spill;

(8) The plan was made available for public review and comment for a minimum of 45 days in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations; and

(9) Each activity in the plan was adopted after consideration of meaningful input from the public. Treasury may require a standard format and additional information in the plans. Plans can be phased and incremental and may be modified later by the applicant, subject to the same submittal requirements. If the applicant has requested or anticipates requesting funding for any part of the activity from other sources, including other components in the Act, the applicant must identify the source, state the amount of funding, and provide the current status of the request. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e).

(c) The applicant must include supporting information in each grant application that:

(1) Proposed activities meet the statutory requirements for eligibility; and

(2) Each activity designed to protect or restore natural resources is based on best available science.

(d) An applicant may satisfy some or all of the requirements in §§ 34.303 and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out activities that are substantively the same as the requirements in § 34.303 and 34.802(a) through (e).

(2) The applicable activity qualified as one or more of the eligible activities in § 34.201.

§ 34.304 Grant award—Direct Component.

Upon determining that the Multiyear Implementation Plan and the grant application meet the requirements of these regulations and the Act, Treasury will execute a grant agreement with the recipient that complies with subpart I of this part, the Act, and other Federal laws and policies on grants.

§ 34.305 Use of funds—Direct Component.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met.

(b) When awarding contracts to carry out an activity under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the state of project execution.

(c) A Gulf Coast State, coastal political subdivision, or coastal zone parish may propose to issue subawards for eligible activities. Recipients that propose to issue subawards must demonstrate their ability to conduct subrecipient monitoring and management, as required by Federal law and policies on grants.

§ 34.306 Reports—Direct Component.

Recipients must submit reports as prescribed by Treasury.

§ 34.307 Recordkeeping—Direct Component.

Recipients must maintain records as prescribed by Treasury and Federal policies on grants, and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits—Direct Component.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with 33 U.S.C. 1321(t)(2) and will include activities the Council intends to carry out, subject to available funding. When selecting activities to carry out in the first three years, except for certain projects and programs that were authorized prior to July 6, 2012, the Council will give highest priority to projects meeting one or more of the criteria in 33 U.S.C. 1321(t)(2)(D)(iii).

§ 34.401 Responsibility for administration—Comprehensive Plan Component.

(a) After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council, which are called *assignees* in these regulations. In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. Any grant agreement must be consistent with applicable Federal laws and policies on grants. The Council must specify whether any part of an assignee's responsibility may be further assigned to another entity and under what terms.

(b) When an assignee's grant or subaward to, or cooperative agreement with, a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that activity, the Council must publish in the **Federal Register** and deliver to the following Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the recipient or subrecipient; a brief description of the activity, including its purpose; and the amount of the award.

(1) House of Representatives committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant agreements and interagency agreements.

§ 34.402 Grant administration—Comprehensive Plan Component.

The Council must publish policies and procedures for administration of Comprehensive Plan Component grants that are consistent with applicable Federal laws and policies for grants. These grant policies and procedures must include uniform guidelines for assignees to use when selecting subrecipients, awarding grants and subawards, and monitoring compliance. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.403 Use of funds—Comprehensive Plan Component.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports—Comprehensive Plan Component.

Assignees must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping—Comprehensive Plan Component.

Assignees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits—Comprehensive Plan Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of assignee's accounts and activities relating to the Act as any of them deems appropriate.

Subpart F—Gulf RESTORE Program—Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of grants.

§ 34.501 Responsibility for administration—Spill Impact Component.

The Council is responsible for awarding and administering grants under this subpart.

§ 34.502 Allocation of funds—Spill Impact Component.

The Council will allocate amounts to the Gulf Coast States based on the Act and regulations promulgated by the Council. The Council will make allocated funds available through grants for activities described in a State Expenditure Plan approved by the Council.

§ 34.503 State Expenditure Plans—Spill Impact Component.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each activity for which the state seeks funding. The Council must develop requirements for these plans, including the requirements below.

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must describe how it takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Comprehensive Plan. In addition, the State Expenditure Plan must describe the processes used:

(1) To evaluate and select activities included in the plan;

(2) To assess the capability of third party entities that will implement activities in the plan;

(3) To prevent conflicts of interest in the development and implementation of the plan;

(4) To obtain public review and comment in accordance with § 34.503(g); and

(5) To verify compliance with the requirements of § 34.203 and this subpart.

(c) For each activity in the State Expenditure Plan, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements of § 34.203 and this subpart;

(3) Location;

(4) Budget;

(5) Milestones;

(6) Projected completion dates; and

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region. Plans can be phased or incremental and may be modified with the Council's approval. If funding has been requested from other sources, including other components of the Act, the plan must identify the source, state how much funding was requested, and provide the current status of the request.

(d) The State Expenditure Plan must demonstrate how the activities in the plan will contribute to the overall economic and ecological recovery of the Gulf Coast, and how each activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

(e) The State Expenditure Plan must demonstrate that activities described in § 34.201(a) through (g) will be carried out in the Gulf Coast Region, as described in § 34.203(c).

(f) No more than 25 percent of funding under the Spill Impact Component is available to a Gulf Coast State under this subpart to pay for infrastructure, unless the Governor or the Governor's representative on the Council certifies that:

(1) The ecosystem restoration needs in the state will be addressed by the activities in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(g) Before being submitted to the Council for approval, a State Expenditure Plan must be available for public review and comment for a minimum of 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

(h) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted state in writing and consult with the state to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the state may obtain expedited judicial review within 90 days in a United States district court located in the state seeking the review.

(i) The Council must publish guidelines explaining when modifications to a State Expenditure Plan require the Council's approval.

§ 34.504 Grant administration—Spill Impact Component.

The Council must publish policies and procedures for administration of the Spill Impact Component grants that are consistent with applicable Federal law and policies for grants. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.505 Use of funds—Spill Impact Component.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports—Spill Impact Component.

Recipients must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping—Spill Impact Component.

Recipients must maintain records as prescribed by the Council and make the records available to the Council, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits—Spill Impact Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of a recipient's accounts and activities relating to the Act as any of them deem appropriate.

Subpart G—NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science Program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration—NOAA RESTORE Act Science Program.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science Program consistent with the Act, this subpart, and Federal law and policies for grants. NOAA must monitor compliance with its grant agreements, cooperative agreements, contracts and agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Use of funds and eligible activities.

(a) Amounts made available to NOAA may be expended to carry out a program comprised of activities described in section 1604 of the Act. These activities include coordination of science and technology programs and stakeholder engagement, in accordance with section 1604(f) of the Act, as well as the following activities with respect to the Gulf of Mexico:

(1) Marine and estuarine research.

(2) Marine and estuarine ecosystem monitoring and ocean observation.

(3) Data collection and stock assessments.

(4) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.

(5) Cooperative research.

(b) NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities—NOAA RESTORE Act Science Program.

None of the Trust Fund amounts may be used for the following activities:

(a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.

(b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.

(c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses—NOAA RESTORE Act Science Program.

(a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses.

(b) The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) NOAA may seek reimbursement of administrative expenses incurred after

the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

§ 34.605 Reports—NOAA RESTORE Act Science Program.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping—NOAA RESTORE Act Science Program.

Recipients and other entities receiving funds under the NOAA RESTORE Act Science Program must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits—NOAA RESTORE Act Science Program.

NOAA and the Treasury Inspector General may conduct audits and reviews of recipient's accounts and activities relating to the Act as either of them deems appropriate.

Subpart H—Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants Program. The program's purpose is to establish centers of excellence to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration—Centers of Excellence Research Grants Program.

Treasury is responsible for awarding grants to the Gulf Coast States, which will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury will develop and apply policies and procedures consistent with this Act and Federal law and policies on grants. Each Gulf Coast State entity issuing grants must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds—Centers of Excellence Research Grants Program.

An equal share of funds will be available to each Gulf Coast State to carry out eligible activities. The duties of a Gulf Coast State will be carried out by the following entities:

(a) In Alabama, the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) In Florida, the Florida Institute of Oceanography.

(c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

(d) In Mississippi, the Mississippi Department of Environmental Quality.

(e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure—Centers of Excellence Research Grants Program.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with the Act and Federal law and policies on grants. At a minimum, the process will include the following:

(a) Each Gulf Coast State must describe the competitive process that the state will use to select one or more Centers of Excellence. The competitive process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher education, to compete. The process must give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants in the grant with interest and expertise in science, technology, and monitoring in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest.

(b) Each Gulf Coast State must describe rules and policies for the grants it will issue to subrecipients to ensure compliance with the Act and Federal law and policies for grants. Each Gulf Coast State must demonstrate in its application that its rules and policies, including the competitive selection process, were published and available for public review and comment for a minimum of 45 days, and that they were adopted after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. This requirement does not apply to state statutes and regulations that may apply to grants made by the state under this subpart.

(c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of funds and eligible activities—Centers of Excellence Research Grants Program.

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act and Federal law and policies for grants.

(b) Gulf Coast States may use funds available under this subpart to award competitive subawards for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities—Centers of Excellence Research Grants Program.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports—Centers of Excellence Research Grants Program.

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form set by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Reports as prescribed by Treasury.

§ 34.707 Recordkeeping—Centers of Excellence Research Grants Program.

Recipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits—Centers of Excellence Research Grants Program.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

Subpart I—Agreements

§ 34.800 General.

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including

Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part. It also describes Treasury's authority to inspect records and the Treasury Inspector General's authority under the Act.

§ 34.801 Grant agreements.

The grant agreements used must conform to the Act and Federal laws and policies on grants, including audit requirements.

§ 34.802 Certifications.

At a minimum, grant agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question.

(a) I certify that each activity funded under this Agreement has been primarily designed to restore and protect [*select all that are appropriate:* the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, economy] of the Gulf Coast Region.

(b) I certify that each activity funded under this Agreement is designed to carry out one or more of the eligible activities for this component.

(c) I certify that each activity funded under this Agreement was selected after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, as described in the grant application.

(d) I certify that each activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR part 34.

(e) I certify that this recipient has procedures in place for procuring property and services under this award that are consistent with the procurement standards applying to Federal grants. This recipient agrees that it will not request funds under this award for any contract unless this certification remains true and accurate.

(f) I certify that a conflict of interest policy is in effect and covering each activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this recipient maintains written documentation sufficient to support each certification made above, and that this recipient's compliance with each of these certifications is a condition of this recipient's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, each grant agreement under subparts D, E, F, G, and H of this part must contain the following conditions:

(a) The recipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds. The recipient must track program income.

(c) Prior to disbursing funds to a subrecipient, the recipient must execute a legally binding written agreement with the entity receiving the subaward. The written agreement will extend all the applicable program requirements to the subrecipient.

(d) The recipient must use the funds only for the purposes identified in the Agreement.

(e) The recipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement. The report must be sent to the Federal agency administering the grant and include the following information:

(1) A description of the use of all funds received.

(2) A statement that funds were used only for purposes identified in the agreement.

(3) A certification that the recipient maintains written documentation sufficient to demonstrate the accuracy of these statements.

(4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry. The certification must be signed by a senior authorized official of the organization or entity receiving grant funds who can legally bind the organization, and who has oversight and authority over the administration and use of the funds in question.

(f) Trust Fund amounts may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(g) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the state in which the acquisition will take place.

§ 34.804 Noncompliance.

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient corrects the violation.

(c) As a condition of receiving funds, recipients and subrecipients shall make available their records and personnel to Treasury in order to carry out the purposes of this section.

§ 34.805 Treasury Inspector General.

In addition to other authorities available under the Act, the Office of the Inspector General of the Department of the Treasury is authorized to conduct, supervise, and coordinate audits and investigations of activities funded through grants under the Act.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–19324 Filed 8–13–14; 11:15 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0489]

RIN 1625–AA08

Special Local Regulation; Cumberland River, Mile 127.0 to 128.0; Clarksville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation from mile 127.0 to mile 128.0, extending bank to bank on the Cumberland River. This zone is necessary to protect participants of the ''Tri Clarksville Triathlon'' during the swim portion of the event. Entry into this area is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

DATES: This rule is effective on August 23, 2014 from 7:00 a.m. to 9:30 a.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0489]. 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 temporary rule, call Petty Officer Chad Phillips, Marine Safety Detachment Nashville, Coast Guard; at (615) 736–5421, email *Chad.E.Phillips@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

BNM Broadcast Notices to Mariners
COTP Captain of the Port
DHS Department of Homeland Security
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Completing the full NPRM process is contrary to the public interest as it would delay the additional safety measures necessary to protect participants and event personnel from the possible marine hazards present during the swimming portion of this event. The ''Tri Clarksville Triathlon'' is planned to take place on August 23, 2014; the swimming portion of this event will take place on the Cumberland River at approximately 127.4. Upon reviewing the details of this event, the Coast Guard determined that a special local regulation is necessary during the event's swim portion. The event has been advertised and is planned by the local community. Delaying the special local regulation would also unnecessarily interfere with the planned event and has the potential to affect contractual obligations of the event sponsors.

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**. Providing 30 days notice for this occurrence would unnecessarily delay the effective date and would be contrary to public interest because immediate action is necessary to protect event participants from the possible marine hazards present during the swim portion of this event.

B. Basis and Purpose

The swim portion of the ''Tri Clarksville Triathlon'' takes place on the Cumberland River from mile 127.0 to 128.0. The Coast Guard determined that a temporary special local regulation is needed to protect the 700 participants in the ''Tri Clarksville Triathlon'' during the swim portion. The legal basis and authorities for this rule are found in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations. The COTP Ohio Valley is establishing a special local regulation for the waters of the Cumberland River, from mile 127.0 to 128.0 to protect the participants during the swim portion of the ''Tri Clarksville Triathlon''. Entry into this area is prohibited unless specifically authorized by the COTP Ohio Valley or designated representative.

C. Discussion of the Final Rule

The COTP Ohio Valley is establishing a special local regulation for the waters of the Cumberland River, from mile 127.0 to 128.0, during the swim portion of the ''Tri Clarksville Triathlon''. During this event, vessels shall not enter into, depart from, or move within the regulated area without permission from the COTP Ohio Valley or his authorized representative. Persons or vessels requiring entry into or passage through the regulated area must request permission from the COTP Ohio Valley, or a designated representative. Sector Ohio Valley may be contacted on VHF–FM Channel 13 or 16, or 1–800–253–7465. This rule is effective from 7:00 a.m. to 9:30 a.m. August 23, 2014. The COTP Ohio Valley will inform the public through Broadcast Notices to Mariners (BNM) of the enforcement period for the special local regulation as well as any changes in the planned schedule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

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

This special local regulation restricts transit on the Cumberland River from mile 127.0 to 128.0 and covers a period of two and one half hours, from 7:00 a.m. to 9:30 a.m. on August 23, 2014. Due to its short duration and limited scope, it does not pose a significant regulatory impact. BNMs will also inform the community of this special local regulation so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area or deviate from this regulation. Requests to deviate from this

regulation will be considered on a case-by-case basis.

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 from mile 127.0 to 128.0 on the Cumberland River, from 7:00 a.m. to 9:30 a.m. on August 23, 2014. The special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for a short period of time. Before the activation of the zone, we would issue maritime advisories widely available to waterway users. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary special local regulation to protect the participants in the swimming portion of the ''Tri Clarksville Triathlon'' on the Cumberland River from mile 127.0 to 128.0 for two and one half hour period on one day. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Commandant Instruction.

An environmental analysis was performed during the marine event permit process for the swimming event and a checklist and a categorical exclusion determination are not required for this special local regulation.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the U. S. Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.T08–0489 is added to read as follows:

§ 100.T08–0489 Special Local Regulation; Cumberland River, Miles 127.0 to 128.0, Clarksville, TN.

(a) *Location.* The following area is a regulated area: All waters of the Cumberland River, beginning at mile 127.0 and ending at mile 128.0.

(b) *Enforcement date.* This section will be enforced from 7:00 a.m. to 9:30 a.m. on August 23, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35, entry into this area is prohibited unless

authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts.* The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners when the special local regulation is being enforced and if there are changes to the planned schedule and enforcement period for this special local regulation.

Dated: July 22, 2014.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2014–19400 Filed 8–14–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0701]

RIN 1625–AA08

Special Local Regulations for Marine Events, Sunset Lake; Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of the special local regulation for the recurring powerboat race known as the Sunset Lake Hydrofest, held in the waters of the Sunset Lake, adjacent to Wildwood Crest, New Jersey. The change of enforcement date for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of Sunset Lake adjacent to Wildwood Crest, New Jersey, during the event.

DATES: This rule is effective August 15, 2014 until September 14, 2014, and will be enforced from 8:00 a.m. to 4:30 p.m. on September 13, 2014 and September 14, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0701]. 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 If you have questions on this temporary rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215)271–4851, email *Brennan.P.Dougherty@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

A. Regulatory History and Information

The regulation for this marine event may be found at 33 CFR 100.501, Table to § 100.501, section (a), line ''9''.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment, and to take effect in less than 30 days, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b) and (d)(3)), which authorizes an agency to issue a rule without prior notice and opportunity to comment, and to take effect in less than 30 days, when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule immediate action is needed to minimize potential danger to the public during the event. The potential dangers posed by power boat race make this change to the special local regulation necessary to provide for the safety of participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have this regulation in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners. For the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations. The Captain of the Port Delaware Bay is establishing a special local regulation for the waters of Sunset Lake, near Wildwood Crest, NJ, to protect event participants, spectators and transiting vessels. Entry into this area is prohibited unless specifically authorized by the Captain of the Port Delaware Bay or designated representative.

C. Discussion of the Final Rule

The Sunset Lake Hydrofest Association sponsors an annual power boat race usually held on the last Friday, Saturday and Sunday in September in the waters of Sunset Lake adjacent to Wildwood Crest, New Jersey.

The regulation listing annual marine events within the Fifth Coast Guard District and special local regulation locations is 33 CFR 100.501. The Table to § 100.501 identifies special local regulations by COTP zone, with the COTP Delaware Bay zone listed in section ''(a.)'' of the Table. The Table to § 100.501, at section (a.) event Number ''9'', describes the enforcement date and regulated location for this marine event.

The date listed in the Table has the marine event on the last Friday, Saturday and Sunday in September. However, this temporary rule changes the marine event date to September 13, 2014 and September 14, 2014, to reflect the actual date of the event.

A fleet of spectator vessels is anticipated to gather nearby to view the marine event. Due to the need for vessel control during the marine event vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they

receive permission from the Coast Guard Patrol Commander.

The Coast Guard will temporarily suspend the regulation listed in Table to § 100.501, section (a) event Number ''9'', and insert this temporary regulation at Table to § 100.501, at section (a.) as event Number ''18'', in order to reflect that the safety zone will be effective and enforced from 8:00 a.m. until 4:30 p.m. on September 13, 2014 and September 14, 2014. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

The regulated area of this special local regulation includes All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.

During the period of the safety zone, all persons and vessels will be prohibited from entering, transiting, mooring, or remaining within the zone, unless specifically authorized by the Captain of the Port Delaware Bay, or her designated representative. Those persons authorized to transit through the safety zone shall abide by and follow all directions provided by the Captain of the Port Delaware Bay, or her designated representative, in order to ensure they are not disrupting this marine event. U.S. Coast Guard Sector Delaware Bay will notify the public by broadcast notice to mariners at least one hour prior to the times of enforcement.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of the air show.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along a portion of the Sunset Lake adjacent to Wildwood Crest, New Jersey from 8:00 a.m. to 4:30 p.m. on September 13, 2014 and September 14, 2014, unless cancelled earlier by the Captain of the Port once all operations are completed.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her designated representative and zone is limited in size and duration. Sector Delaware Bay will issue maritime advisories widely available to users of the Delaware Bay and River.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100, applicable to special local regulations on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting the waters of Sunset Lake adjacent to Wildwood Crest, NJ, in order to protect the safety of life and property on the waters for the duration of the power boat race. This rule is categorically excluded from further review under paragraph 34(h) 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, in the Table to § 100.501, suspend line No. (a.)9 and add temporary line No. (a.)18 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table to § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
*	*	*	*	* * *
18	September 13, 2014 and September 14, 2014	Sunset Lake Hydrofest	Sunset Lake HydrofestAssn.	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
*	*	*	*	* * *

Dated: August 1, 2014.

B.A. Cooper,

Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.

[FR Doc. 2014–19393 Filed 8–14–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0702]

RIN 1625–AA08

Special Local Regulations for Marine Events, New Jersey Intracoastal Waterway; Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of the special local regulation for the recurring event known as the Atlantic City International Triathlon, held in the waters of the New Jersey Intracoastal Waterway, adjacent to Atlantic City, New Jersey. The change of enforcement date for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of the New Jersey Intracoastal Waterway adjacent to Atlantic City, New Jersey, during the event.

DATES: This rule is effective August 15, 2014 until September 14, 2014.

This rule will be enforced from 6:00 a.m. to 12:00 p.m. on September 14, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0702]. 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 If you have questions on this temporary rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271–4851, email *Brennan.P.Dougherty@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

A. Regulatory History and Information

The regulation for this marine event may be found at 33 CFR 100.501, Table to § 100.501, section (a), line ''14''.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule immediate action is needed to minimize potential danger to the public during the event. The potential dangers posed by this triathlon make this change to the special local regulation necessary to provide for the safety of participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have this regulation in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

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**. Delaying the effective date would be contrary to the public interest, because immediate action is needed to ensure the safety of the event. However, notifications will be made to users of the affected area near Atlantic City, NJ, via marine information broadcasts and a local notice to mariners.

B. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations. The Captain of the Port Delaware Bay is establishing a special local regulation for the waters of the New Jersey Intracoastal Waterway, near Atlantic City, NJ, to protect event participants, spectators and transiting vessels. Entry into this area is prohibited unless specifically authorized by the Captain of the Port Delaware Bay or designated representative.

C. Discussion of the Final Rule

Atlantic City, NJ, sponsors an annual triathlon usually held on the third Sunday in September in the waters of the New Jersey Intracoastal Waterway adjacent to Atlantic City, New Jersey.

The regulation listing annual marine events within the Fifth Coast Guard District and special local regulation locations is 33 CFR 100.501. The Table to § 100.501 identifies special local regulations by COTP zone, with the COTP Delaware Bay zone listed in section ''(a.)'' of the Table. The Table to § 100.501, at section (a.) event Number ''14'', describes the enforcement date and regulated location for this marine event.

The date listed in the Table has the marine event on the third Sunday of September. However, this temporary rule changes the marine event date to September 14, 2014, to reflect the actual date of the event.

Approximately 2000 people anticipated to participate in this marine event. Due to the need for vessel control during the marine event vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

The Coast Guard will temporarily suspend the regulation listed in Table to § 100.501, section (a) event Number ''14'', and insert this temporary regulation at Table to § 100.501, at section (a.) as event Number ''17'', in order to reflect that the safety zone will be effective and enforced from 6:00 a.m. until 12:00 p.m. on September 14, 2014. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

The regulated area of this special local regulation includes All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°21′20″ N, longitude 074°27′18″ W thence northeast to latitude 39°21′27.47″ N, longitude 074°27′10.31″ W thence northeast to latitude 39°21′33″ N, longitude 074°26′57″ W thence northwest to latitude 39°21′37″ N, longitude 074°27′03″ W thence southwest to latitude 39°21′29.88″ N, longitude.

During the period of the safety zone, all persons and vessels will be prohibited from entering, transiting, mooring, or remaining within the zone, unless specifically authorized by the Captain of the Port Delaware Bay, or her designated representative. Those persons authorized to transit through the safety zone shall abide by and follow all directions provided by the Captain of the Port Delaware Bay, or her designated representative, in order to ensure they are not disrupting this marine event. U.S. Coast Guard Sector Delaware Bay will notify the public by broadcast notice to mariners at least one hour prior to the times of enforcement.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of the triathlon.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along a portion of the New Jersey Intracoastal Waterway adjacent to Atlantic City, New Jersey from 6:00 a.m. to 12:00 p.m. on September 14, 2014, unless cancelled earlier by the Captain of the Port once all operations are completed.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her designated representative and zone is limited in size and duration. Sector Delaware Bay will issue maritime advisories widely available to users of the Delaware Bay and River.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100, applicable to special local regulations on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting the waters of the Atlantic Ocean adjacent to Atlantic City, NJ, in order to protect the safety of life and property on the waters for the duration of the triathlon. This rule is categorically excluded from further review under paragraph 34(h) 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, in the Table to § 100.501, suspend lines No. (a.)14 and add temporary line No. (a.)17 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table to § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
*	*	*	*	*
17	September 14, 2014	Atlantic City International Triathlon.	Atlantic City, NJ	All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°21′20″ N, longitude 074°27′18″ W thence northeast to latitude 39°21′27.47″ N, longitude 074°27′10.31″ W thence northeast to latitude 39°21′33″ N, longitude 074°26′57″ W thence northwest to latitude 39°21′37″ N, longitude 074°27′03″ W thence southwest to latitude 39°21′29.88″ N, longitude.
*	*	*	*	*

Dated: August 1, 2014.

B.A. Cooper,

Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.

[FR Doc. 2014–19398 Filed 8–14–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0659]

Safety Zone; Hornblower Fireworks; East River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the Captain of the Port (COTP) New York Zone on August 20, 2014. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission from the COTP or a designated representative.

DATES: The regulations for the marine event listed in Table 1 to 33 CFR 165.160(4.4) will be enforced on August 20, 2014 from 8:45 p.m. through 10 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in Table 1 to 33 CFR 165.160(4.4) on the specified date and time as indicated below. The final rule establishing this safety zone was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

4.4 Hornblower Fireworks, Seaport, East River Safety Zone.	• Launch site: All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the southeast corner of pier 6, Manhattan. • Date: August 20, 2014 • Time: 8:45 p.m.–10:00 p.m.

Under the provisions of 33 CFR 165.160, No persons or vessels will be allowed to enter into, transit through, or anchor in the safety zone without the permission of the COTP or a designated representative. Vessels wishing to transit through the safety zone may contact a designated representative via VHF channel 13 or 16 to request permission. Vessels may transit outside the safety zone but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register,** the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: July 29, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–19409 Filed 8–14–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AO42

Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing Servicemembers' Group Life Insurance (SGLI), Family SGLI, SGLI Traumatic Injury Protection, and Veterans' Group Life Insurance (all hereafter referred to as SGLI) to clarify and acknowledge what is implicit in the law: that VA, which has the responsibility under the law to administer the SGLI programs, also has the right to full access to records held by the insurer or on behalf of the insurer from whom VA has purchased a policy. These records include all of the insurer's records related to the operation and administration of the SGLI programs necessary to protect the legal and financial rights of the Government and of the persons affected by the activities of the agency and its agents. This document adopts as a final rule, without change, the proposed rule published in the **Federal Register** on September 23, 2013.

DATES: *Effective Date:* This rule is effective September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs, Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842–2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 23, 2013, VA published in the **Federal Register** (78 FR 58264), a proposed rule to add § 9.21 to 38 CFR part 9, to clarify that, as part of its responsibilities under 38 U.S.C. 1966 and 44 U.S.C. 3301, VA has the right to complete and unrestricted access to the records of any insurer, reinsurer(s), and their successors (jointly referred to hereafter as ''insurer'') with respect to the SGLI policy and related benefit programs or services that are derived from the policy. In order for VA to meet its responsibilities under sections 1966 and 3301, VA requires access to any records relating to the operation and administration of the benefit programs derived from the policy and records related to the organization, functions, policies, decisions, procedures, and essential transactions of the insurer. VA's access to records includes records containing financial information of the insurer and records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the SGLI programs, including personally identifiable information concerning such individuals and their beneficiaries.

The proposed rule was published in the **Federal Register** (78 FR 58264) on September 23, 2013. A 60-day comment period was provided. No public comments were received regarding the proposed rule. As a result, based on the rationale set forth in the proposed rule, we adopt the provisions of the proposed rule as a final rule without change. This rule will apply to the insurer as of the effective date of the final rule, namely 30 days following the date of publication of the final rule.

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).

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this final rule 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 the insurer and entities acting on its behalf and individuals whose records may be held by the insurer and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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

document on August 11, 2014, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: August 11, 2014.

Robert C. McFetridge,

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

For the reasons set forth in the preamble to this final rule and to the proposed rule, VA 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.

■ 2. Add § 9.21 to read as follows:

§ 9.21 VA's access to records maintained by the insurer, reinsurer(s), and their successors.

(a) In order to perform oversight responsibilities designed to protect the legal and financial rights of the Government and persons affected by the activities of the Department of Veterans Affairs and its agents and to ensure that the policy and the related program benefits and services are managed effectively and efficiently as required by law, the Secretary of Veterans Affairs shall have complete and unrestricted access to the records of any insurer, reinsurer(s), and their successors with respect to the policy and related benefit programs or services that are derived from the policy. This access includes access to:

(1) Any records relating to the operation and administration of benefit programs derived from the policy, which are considered to be Federal records created under the policy;

(2) Records related to the organization, functions, policies, decisions, procedures, and essential transactions, including financial information, of the insurer, reinsurer(s), and their successors; and

(3) Records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the Servicemembers' and Veterans' Group Life Insurance programs, including personally identifiable information concerning such individuals and their beneficiaries.

(b) Complete access to these records shall include the right to have the originals of such records sent to the Secretary of Veterans Affairs or a representative of the Secretary at the Secretary's direction. The records shall be available in either hard copy or readable electronic media. At the Secretary's option, copies may be provided in lieu of originals where allowed by the Federal Records Act, 44 U.S.C. chapter 31.

Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 1966, 5701, 5725, 5727, 7332; 44 U.S.C. 3101, 3301

[FR Doc. 2014–19491 Filed 8–14–14; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2008–0708, FRL–9915–09–OAR]

RIN 2060–AR90

NESHAP for Reciprocating Internal Combustion Engines; NSPS for Stationary Internal Combustion Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on reconsideration.

SUMMARY: On January 30, 2013, the Environmental Protection Agency (EPA) finalized amendments to the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines and the Standards of Performance for Stationary Internal Combustion Engines. Subsequently, the EPA received three petitions for reconsideration of the final rule. On September 5, 2013, the EPA announced reconsideration of and requested public comment on three issues raised in the petitions for reconsideration. A summary of the public comments received on the September 5, 2013, notice of reconsideration and the EPA's responses to those comments (Response to Comment document) can be found in the rulemaking docket at Docket Number EPA–HQ–OAR–2008–0708. After careful consideration of the public comments received on the September 5, 2013, notice, the EPA has determined that it will not propose any changes to the regulations at this time related to the three petition issues, and is providing notice of this decision. The EPA is informing the petitioners of the decision in separate letters to the petitioners. The letters explain the EPA's reasons for not proposing changes to the regulations for those three issues. Further discussion of the three petition issues can be found in the Response to Comment document.

DATES: Effective August 15, 2014.

Any petitions for review of the letters announcing the EPA's decision not to propose changes to the regulations in response to the public comments received on the three issues under reconsideration described in this Notice must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; facsimile number: (919) 541–5450; email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** document, the petitions for reconsideration, the letters responding to the petitioners and the Response to Comment document are available in the docket that the EPA established for the ''National Emission Standards for Hazardous Air Pollutants for Existing Reciprocating Internal Combustion Engines'' under Docket ID No. EPA–HQ–OAR–2008–0708. The document numbers for the petitions for reconsideration are EPA–HQ–OAR–2008–0708–1505, EPA–HQ–OAR–2008–0708–1506 and EPA–HQ–OAR–2008–0708–1507. All documents in the docket are listed in the *www.regulations.gov* index. The EPA also relies on documents in Docket ID Nos. EPA–HQ–OAR–2002–0059, EPA–HQ–OAR–2005–0029, EPA–HQ–OAR–2005–0030 and EPA–HQ–OAR–2010–0295, and incorporated those dockets into the docket for this action. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, 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 Docket is (202) 566–1742.

This **Federal Register** notice, the petitions for reconsideration, the letters providing the EPA's decision on the reconsideration and the Response to Comment document can also be found on the EPA's Web site at *http://www.epa.gov/ttn/atw/icengines/.* The amendments to the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines and the Standards of Performance for Stationary Internal Combustion Engines were published in the *Federal Register* on January 30, 2013, at 78 FR 6674. The notice of reconsideration and request for public comment was published in the **Federal Register** on September 5, 2013, at 78 FR 54610.

II. Judicial Review

Any petitions for review of the letters announcing the EPA's decision not to propose changes to the regulations in response to the public comments received on the three issues under reconsideration described in this Notice must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by October 14, 2014.

List of Subjects

40 CFR part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 1, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–19062 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2012–0510; FRL–9914–30–OAR]

RIN 2060–AR58

National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Flexible Polyurethane Foam (FPUF) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, the EPA is finalizing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction (SSM); add requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); clarify the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities; and revise the rule to add a schedule for delay of leak repairs for valves and connectors.

DATES: *Effective Date:* This final action is effective on August 15, 2014. *Compliance Dates:* For the revised SSM requirements and electronic reporting requirements for existing FPUF Production facilities is August 15, 2014.

For the new requirements prohibiting the use of HAP ABAs for existing slabstock FPUF Production facilities is 90 days from the effective date of the promulgated standards, November 13, 2014.

New sources must comply with all of the standards immediately upon the effective date of the standard, August 15, 2014, or upon startup, whichever is later.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2012–0510. 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., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue 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 questions about this final action, contact Ms. Kaye Whitfield, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–5450; and email address: *whitfield.kaye@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office and Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. Scott Throwe, Office of Enforcement and Compliance Assurance (OECA); telephone number: (202) 564–7013; and email address: *throwe.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ABA auxiliary blowing agent
CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FPUF flexible polyurethane foam
FR Federal Register
HAP hazardous air pollutants
HQ hazard quotient
ICR information collection request
MACT maximum achievable control technology
MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget

PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SBA Small Business Administration
SSM startup, shutdown and malfunction
TOSHI total organ-specific hazard index
tpy tons per year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act

Background Information. On November 4, 2013 (78 FR 66108), the EPA proposed revisions to the FPUF Production NESHAP based on our RTR, and we also proposed to amend provisions related to emissions during periods of SSM, to add requirements for electronic reporting of performance testing, and to clarify certain rule requirements. In this action, we are finalizing revisions to the rule. We summarize some of the comments we received regarding the proposed rule and provide our responses in this preamble. A summary of the public comments on the proposal not presented in the preamble, and the EPA's responses to those comments are available in Docket ID No. EPA–HQ–OAR–2012–0510. A ''track changes'' version of the regulatory language that reflects how the current FPUF NESHAP is being revised is available in the docket for this action.

Organization of this Document. We provide the following outline to assist in locating information in the preamble.

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review
II. Background
A. What is the statutory authority for this action?
B. What is the FPUF Production source category and how do the NESHAP promulgated on October 7, 1998 regulate its HAP emissions?
C. What changes have been made to the standards since promulgation of the NESHAP for the FPUF Production source category, and what changes did we propose in our November 4, 2013 RTR proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the FPUF Production source category?
B. What are the final rule amendments based on the technology review for the FPUF Production source category?
C. What are the final rule amendments addressing emissions during periods of startup, shutdown and malfunction?
D. What are the final rule amendments for submission of performance test data to the EPA?
E. What other changes have been made to the NESHAP?
F. What are the effective and compliance dates of the revisions to the FPUF Production NESHAP?
IV. What is the rationale for our final decisions and amendments for the FPUF Production source category?
A. Residual Risk Review for the FPUF Production Source Category
B. Technology Review for the FPUF Production Source Category
C. Startup, Shutdown and Malfunction Provisions for the FPUF Production Source Category
D. Electronic Reporting of Performance Test Data Provisions for the FPUF Production Source Category
E. Clarifications to the FPUF Production NESHAP
V. Summary of Cost, Environmental and Economic Impacts
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORY AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS code [a]	MACT code [b]
Flexible Polyurethane Foam Production	326150	1314

[a] North American Industry Classification System.
[b] Maximum Achievable Control Technology.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will be available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, the EPA will post a copy of this final action on the project Web site at: *http://www.epa.gov/ttn/atw/foam/foampg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes an overview of the RTR program, links to project Web sites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by October 14, 2014. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in

any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to reconsider the rule, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or any combination of HAP at a rate of 25 tpy or more. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems or techniques that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials or other modifications; enclose systems or processes to eliminate emissions; collect, capture or treat HAP when released from a process, stack, storage or fugitive emissions point; and/or are design, equipment, work practice or operational standards.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements and may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 78 FR 66108.

B. What is the FPUF Production source category and how do the NESHAP promulgated on October 7, 1998 regulate its HAP emissions?

The EPA promulgated the FPUF Production NESHAP on October 7, 1998 (63 FR 53979). The standards are codified at 40 CFR part 63, subpart III. The FPUF Production industry consists of facilities that produce slabstock or molded flexible polyurethane foam or rebond foam. The source category covered by these MACT standards currently includes 12 facilities.

The FPUF Production NESHAP contains requirements specific to each of the three types of foam production processes. For slabstock foam production, these standards include diisocyanate and HAP auxiliary blowing agent (ABA) emissions reduction requirements. For molded and rebond foam production, these standards prohibit the use of HAP in mold release agents and equipment cleaners, except in very limited circumstances.

C. What changes have been made to the standards since promulgation of the NESHAP for the FPUF Production source category, and what changes did we propose in our November 4, 2013 RTR proposal?

No changes have been made to the FPUF Production NESHAP since the promulgation of the NESHAP on October 7, 1998. On November 4, 2013, the EPA published a proposed rule in the **Federal Register** for the FPUF Production NESHAP, 40 CFR part 63, subpart III, proposing revisions to the MACT based on the RTR analyses and proposing additional revisions. We proposed the following revisions:

- A prohibition of the use of HAP-based ABAs for slabstock foam production facilities;
- Revisions to requirements related to emissions during periods of SSM, including the addition of provisions for an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions;
- The addition of requirements for reporting of performance testing through the ERT;
- Clarifications to the leak detection methods allowed for diisocyanate

[1] The U.S. Court of Appeals has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

storage vessels at slabstock foam production facilities; and

- Addition of a schedule for delay of leak repairs for valves and connectors.

III. What is included in this final rule?

Today's action finalizes the EPA's determinations for the FPUF Production source category pursuant to the RTR provisions of CAA section 112, and amends the FPUF Production NESHAP based on those determinations. With one exception, today's action also finalizes the changes to the NESHAP described in section II.C. of the preamble. For the reasons explained in section IV.C of the preamble, we are not including the proposed affirmative defense provisions in the final rule. In the following subsections, we introduce and summarize the final amendments to the FPUF Production NESHAP.

Pursuant to CAA section 112(f), we are revising the FPUF Production NESHAP to include a prohibition of the use of HAP or HAP-based products as ABAs for all slabstock FPUF Production operations. We evaluated the costs, emissions reductions, energy implications and cost effectiveness of this standard and determined that this measure is cost effective and technically feasible and will provide the public with an ample margin of safety from exposure to emissions from the FPUF Production source category.

B. What are the final rule amendments based on the technology review for the FPUF Production source category?

We identified one development in practices, processes or control technologies that we determined to be cost-effective. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the MACT standards to include that development. Specifically, as we proposed, we are finalizing a prohibition of the use of HAP or HAP-based products as ABAs for all slabstock FPUF Production operations. As noted in section III.A of the preamble, we are concurrently promulgating this HAP and HAP-based ABA prohibition under section 112(f)(2) of the CAA to provide an ample margin of safety to protect public health.

C. What are the final rule amendments addressing emissions during periods of startup, shutdown and malfunction?

We are finalizing changes to the FPUF Production NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in this rule that apply at all times. Table 2 of the General Provisions (applicability table) is being revised to change several of the references related to requirements that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary or redundant language in the absence of the SSM exemption. We determined that facilities in this source category can meet the applicable emission standards at all times, including periods of startup and shutdown, in compliance with the current MACT standards; therefore, the EPA made the determination that no additional standards are needed to address emissions during these periods.

For the reasons explained in section IV.C of the preamble, we are not including the proposed affirmative defense provisions in the final rule.

D. What are the final rule amendments for submission of performance test data to the EPA?

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing changes to the FPUF Production NESHAP to require owners and operators of FPUF Production facilities to submit electronic copies of certain required performance test reports through an electronic performance test report tool called the ERT. This requirement to submit performance test data electronically to the EPA does not require any additional performance testing and applies only to those performance tests conducted using test methods that are supported by the ERT.

E. What other changes have been made to the NESHAP?

Today's rule also finalizes clarifications to the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities. During unloading events at these facilities, the current requirements allow the vapor return line to be inspected for leaks using visual, audible or any other detection method. Today, the EPA is clarifying that ''any other detection method'' must be an instrumental detection method.

We are also finalizing a revision to the requirements for delay of leak repairs for valves and connectors in diisocyanate service. This revision requires equipment leaks from valves and connectors that are on a delay of repair schedule to have repairs completed as soon as practicable, but not later than 6 months after the leak is detected.

F. What are the effective and compliance dates of the revisions to the FPUF Production NESHAP?

The revisions to the FPUF Production NESHAP being promulgated in this action are effective on August 15, 2014.

The compliance date for the revised SSM requirements and electronic reporting requirements for existing FPUF Production facilities is August 15, 2014. The compliance date for the new requirements prohibiting the use of HAP ABAs for existing slabstock FPUF Production facilities is 90 days from the effective date of the promulgated standards, November 13, 2014.

New sources must comply with all of the standards immediately upon the effective date of the standard, August 15, 2014, or upon startup, whichever is later.

IV. What is the rationale for our final decisions and amendments for the FPUF Production source category?

For each issue, this section provides a description of what we proposed and are finalizing for the issue, the EPA's rationale for the final decisions and amendments and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the FPUF Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the FPUF Production source category?

Pursuant to CAA section 112(f), we conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 4, 2013, proposed rule for the FPUF Production NESHAP (78 FR 66108). The results of the risk assessment are presented briefly below in Table 2, and in more detail in the residual risk document: *Final Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category,* which is available in the docket for this rulemaking. Based on actual emissions for the FPUF Production source category, the maximum individual risk (MIR) was estimated to be up to 0.7-in-1 million, the maximum chronic non-cancer total organ-specific hazard index (TOSHI) value was estimated to be up to 0.9, and the maximum off-site acute hazard quotient (HQ) value was estimated to be up to 0.9. The total estimated national

cancer incidence from these facilities based on actual emission levels was 0.00004 excess cancer cases per year, or one case in every 25,000 years. Based on MACT-allowable emissions for the FPUF Production source category, the MIR was estimated to be up to 5-in-1 million, the maximum chronic non-cancer TOSHI value was estimated to be up to 0.9, and the maximum off-site acute HQ value was estimated to be up to 4. The total estimated national cancer incidence from these facilities based on MACT-allowable emission levels was 0.0004 excess cancer cases per year, or one case in every 2,500 years. We also found there were no persistent and bio-accumulative HAP (PB–HAP) or any of the seven ''environmental HAP'' emitted by facilities in this source category. We weighed all health risk factors in our risk acceptability determination, and we proposed that the residual risks to public health from the FPUF Production source category are acceptable.

TABLE 2—FLEXIBLE POLYURETHANE FOAM PRODUCTION INHALATION RISK ASSESSMENT RESULTS

Emissions level	Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]	Estimated population at increased risk of cancer ≥ 1-in-1 Million	Estimated annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]	Maximum screening acute non-cancer HQ [4]
Actual Emissions Level	13	0.7	0	0.00004	0.9	HQ_{ERPG-1} = 0.9.
MACT- Allowable Emissions Level.	13	5	700	0.0004	0.9	HQ_{REL} = 4 HQ_{ERPG-1} = 0.9.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the FPUF Production source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

We then considered whether the FPUF Production NESHAP provides an ample margin of safety to protect public health and prevent adverse environmental effects. In considering whether the standards should be tightened, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility and other relevant factors related to each of the ''developments in practices, processes and control technologies'' identified under our technology review. Based on that analysis, we proposed to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities, which were shown to contribute nearly 100 percent to the maximum individual cancer risks at the MACT-allowable emissions level for this source category. Furthermore, we proposed that additional HAP emissions controls for FPUF production diisocyanate storage vessels and diisocyanate equipment leaks are not necessary to provide an ample margin of safety.

2. How did the risk review change for the FPUF Production source category since the proposed rule?

Information received from a commenter on the proposed rule indicates that one facility included in the FPUF Production dataset at proposal is not a major source of HAP and is not subject to the FPUF Production NESHAP. Based on this information, we determined that the modeling dataset for the FPUF Production source category does not need to include this facility. Removing this facility from the dataset and performing additional modeling would result in slightly decreased emissions and risks from the source category. This change would not affect our decisions regarding risk acceptability or ample margin of safety; thus, we determined that additional modeling to include this revision is not necessary.

We revised the risk assessment documentation for one aspect of the analysis which was not explained previously. To estimate ambient concentrations for evaluating long-term exposures, the Human Exposure Model (HEM) uses the geographic centroids of census blocks as dispersion model receptors. The census block centroids are generally good surrogates for where people live within a census block; however, risk estimates based on such centroids can be underestimated for those residences nearer to a facility than the centroid and overestimated for those residences farther from the facility than the centroid. For this source category, we added several receptors for census blocks where the centroid location was not representative of the residential locations. We revised the risk assessment documentation to provide additional information on census block centroid changes in Appendix 7 of the *Final Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category* document, which is available in the docket for this action.

We also revised the proximity analysis, which identifies any overrepresentation of minority, low income or indigenous populations near facilities in the source category, to add a map of the facilities in the source category, and to remove a previously included facility that is not part of the source category. The results of this analysis are presented in the section of this preamble titled, ''Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.''

3. What comments did we receive on the risk review, and what are our responses?

Several comments were received regarding the FPUF Production source category risk review. The following is a summary of one of those comments and our response. Other comments received and our responses to those comments can be found in the Comment Summary and Response document available in the docket for this action (EPA–HQ–OAR–2012–0510).

Comment: One commenter stated that the EPA refused to strengthen the existing standards for storage vessels and equipment leaks based purely on its cost-benefit analysis. The commenter declared that the EPA's approach considered only the cost per ton of HAP emission reduction, without assessing relevant factors such as: The individual HAP emitted and the impact those HAP can have at a level below 1 ton; how many people would be affected by the potential emission reductions; where they live and whether they are in a

community containing multiple HAP sources; or whether they face a longstanding environmental justice impact. The commenter further stated that the EPA also did not consider or address whether the standards would provide any ''margin of safety'' to protect public health, much less whether the margin is ''ample.'' Thus, the commenter claims the EPA ignored and violated section 112(f)(2) of the CAA.

Response: We disagree with the comment that the EPA based its decision under CAA section 112(f) that it was not necessary to tighten the FPUF Production standards for storage vessels and equipment leaks only on a cost-benefit analysis. To address the requirements of CAA section 112(f)(2) for the FPUF Production source category, we performed a risk assessment, and based on the results of that assessment, made a determination of whether emissions remaining after implementation of the existing standards result in risks that are acceptable. We did not consider costs as part of that analysis. For purposes of determining whether the existing standards provide an ample margin of safety to protect public health, we assessed the additional risk reductions that would result from tightening the standards (see 78 FR 66123–66124). Specifically, we investigated the possibility of requiring additional emissions controls for diisocyanate storage vessels and equipment leaks at slabstock production facilities and determined that these control options would not achieve a reduction in the maximum individual cancer risks or any of the other risk metrics. In addition to looking at the effect of these controls on risk, we also determined that they would result in very low emissions reductions and would be expensive to implement (see 78 FR 66123–66124). Based on the analysis of the emission and risk reductions and the costs, we proposed (and are determining in this final rule) that it is not necessary to modify the existing standards to provide an ample margin of safety.

Further, the EPA disagrees with the commenter that we did not assess the individual HAP emitted or the impact those HAP can have at a level below 1 tpy. As noted at proposal (see 78 FR 66122), we assessed the risks considering all individual HAP emissions, regardless of emission level, from the FPUF Production source category. We also assessed the impact that the potential emission control options would have on the level of emissions of the individual HAP and on the risks associated with those emissions.

Regarding the comment that the EPA should consider whether people live in a community containing multiple HAP sources, we note that background risks and contributions to risk from sources outside the facilities under review were not considered in the ample margin of safety determination for this source category, mainly because of the significant uncertainties associated with emissions estimates for such sources (see 78 FR 66121). Our approach here is consistent with the approach we took regarding this issue in the Hazardous Organic NESHAP (HON) RTR, which the court upheld in the face of claims that the EPA had not adequately considered background (*NRDC* v. *EPA,* 529 F.3d 1077 (D.C. Cir. 2008)).

With regard to the comment concerning longstanding environmental justice impacts, we refer to the preamble of the proposed rule regarding how we examine environmental justice concerns generally, as well as in this specific rulemaking.

4. What is the rationale for our final decisions for the risk review?

For the reasons explained in the proposed rule, we determined that the FPUF Production NESHAP, as modified to include the HAP and HAP-based ABA prohibition described above, will provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Since proposal, neither the risk assessment nor our determinations regarding risk acceptability and ample margin of safety have changed. Therefore, pursuant to CAA section 112(f)(2), we are revising the FPUF Production NESHAP to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities to provide an ample margin of safety.

B. Technology Review for the FPUF Production Source Category

1. What did we propose pursuant to CAA Section 112(d)(6) for the FPUF Production source category?

Pursuant to CAA section 112(d)(6), we conducted a technology review, which focused on identifying and evaluating developments in practices, processes and control technologies for the emission sources in the FPUF Production source category. At proposal, we identified developments in practices, processes or control technologies for slabstock production lines, diisocyanate storage vessels and equipment leaks.

For slabstock production facilities, the current MACT standards allow limited use of HAP-based ABAs in the slabstock foam production line, while prohibiting the use of HAP-based products in equipment cleaners, except at facilities operating under the provisions for a source-wide emission limit for a single HAP ABA. Prohibiting the use of HAP-based ABAs and HAP-based equipment cleaners at slabstock foam production facilities was identified at proposal as a development in practices and/or processes that could reduce HAP emissions from the slabstock foam production facilities, principally from the foam production line. Data available to the EPA showed that none of the facilities subject to the FPUF Production NESHAP were using any HAP ABAs, or ABAs containing HAP (i.e., HAP-based ABAs). Therefore, we concluded that there would be no cost associated with codifying a prohibition on the use of HAP or HAP-based ABAs, which is consistent with current industry practice.

For diisocyanate storage vessels, two potential control technologies were identified at proposal, regenerative and recuperative thermal oxidizers, which could increase the emissions capture and control efficiency from 95 percent to 98 percent for those tanks that are currently controlled with a carbon adsorption system. We estimated an additional emission reduction of 0.0026 tpy of diisocyanate would be associated with this increase in emissions control efficiency, and the estimated costs would be $124 million and $270 million per ton of HAP reduced for regenerative and recuperative thermal oxidizers, respectively.

For equipment leaks, two potential developments in practices, processes or control technologies were identified at proposal: use of ''leakless'' valves in diisocyanate service at slabstock facilities and implementation of an enhanced leak detection and repair (LDAR) program for diisocyanate equipment leaks at slabstock foam production facilities.

''Leakless'' valves are in place in some facilities outside the FPUF Production source category, particularly oil refineries. We analyzed the costs associated with requiring this technology for valves in diisocyanate service in the FPUF Production source category using cost estimates developed for the synthetic organic chemical manufacturing industry. Nationwide annual costs were estimated to be $310,000/yr, with total capital investments of $2,260,000. Emission reductions were estimated to be approximately 1 tpy, resulting in a cost

effectiveness of $305,000/ton HAP reduction.

At proposal, we evaluated an enhanced LDAR program for equipment in diisocyanate service at slabstock foam production facilities that would require instrumental monitoring, employing Method 21 of 40 CFR part 60, appendix A, and we considered two sets of leak definitions for this program. For both sets of leak definitions, nationwide total annual costs are estimated to be approximately $28,200/yr, with total capital investments of approximately $32,400. Reduction of HAP emissions are estimated to be approximately 0.38 tpy, resulting in a cost effectiveness of approximately $74,000/ton HAP reduction.

In addition to instrumental monitoring, another aspect of an enhanced LDAR program was investigated at proposal. The current MACT standards allow leak repairs to be delayed under certain circumstances. Limits on the number of leaking components awaiting repair were identified as a development in a practice that could reduce diisocyanate emissions from equipment leaks as part of an enhanced LDAR program. We estimate the costs of requirements that would limit the number of leaking equipment components awaiting repair, require mass emission testing for leaking valves and require valves with high leak rates to be repaired within 7 days. Nationwide annual costs are estimated to be $19,300/yr, with no capital investments required. Emission reductions are estimated to be 0.08 tpy, resulting in a cost effectiveness of $233,800 per ton of HAP reduction for equipment in diisocyanate service at slabstock facilities.

Based on the costs and the emission reductions that would be achieved with the identified developments, we proposed that it was necessary to revise the MACT standard pursuant to CAA section 112(d)(6) to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities, and we proposed that it was not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to require the identified developments in practices, processes or control technologies for diisocyanate storage vessels or equipment leaks. More information concerning our technology review can be found in the memorandum titled, *Technology Review and Cost Impacts for the Proposed Amendments to the Flexible Polyurethane Foam Production Source Category,* which is available in the docket and in the preamble to the proposed rule, 78 FR at 66108 to 66138.

2. How did the technology review change for the FPUF Production source category?

We have not changed any aspects of our technology review since the proposal.

3. What key comments did we receive on the technology review, and what are our responses?

The following is a summary of the comments received regarding the FPUF Production source category technology review and our responses to these comments.

Comment: One commenter claims the EPA did not fulfill the letter or purpose of CAA section 112(d)(6) to ensure that the EPA updates standards when developments have occurred that would create stronger protection for public health. Another commenter also believes this rule could be more stringent in order to encourage advancement in technology to reduce HAP emissions and noted that the EPA's cost-benefit analysis of control technologies considered does not foster growth of more effective or less expensive technologies.

Response: CAA section 112(d)(6) requires the EPA to ''review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.'' The EPA retains significant discretion in balancing relevant factors in determining whether it is ''necessary'' to revise the existing technology-based MACT standards. See, e.g., *Sierra Club* v. *EPA,* 325 F. 3d 374, 378 (D.C. Cir. 2003) (under CAA section 202(l)(2), the EPA is to consider factors beyond pure technological capability, and the statute does not direct how the EPA should weigh such factors). In reviewing standards promulgated pursuant to CAA section 112(d)(2) and (3), and determining whether revising them is ''necessary'' under section 112(d)(6), the EPA may take into consideration cost and feasibility when evaluating developments in practices, processes and control technologies.

The commenter does not specifically indicate what action the EPA should take to ''foster growth of more effective or less expensive technologies.'' To the extent the commenter is suggesting that the EPA require controls under CAA section 112(d)(6) that it has concluded are not cost effective at this time in the hope that it will spur action to find ways to reduce cost, we disagree that such a result is required by CAA section 112(d)(6).

Comment: One commenter stated that by not updating the leak definitions of the rule, the EPA is authorizing an unlimited amount of HAP to be emitted, as long as the leaks are below the leak definitions. According to the commenter, this violates *National Lime Association* v. *EPA,* 233 F.3d 625 (D.C. Cir. 2000), in which the Court held that the EPA must set an emission standard to limit all emitted HAP. The commenter asserted that the EPA must set emission limits that prohibit leaks above specific levels.

Response: We disagree with the commenter that the EPA must set emission limits that prohibit leaks above a certain level. Under CAA section 112, national emission standards must, whenever possible, take the format of a numerical emission standard. However, CAA section 112(h)(2) recognizes two conditions under which the EPA is not required to establish a numerical emission limit. These conditions are (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant or (2) if the application of measurement methodology is not practicable due to technological and economic limitations. If a numerical emission limit cannot be established, the EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof. For equipment leak sources, the EPA has determined that equipment leaks meet both of these conditions, and it is not feasible to prescribe or enforce emission standards. See e.g., 57 FR 62608 (HON)).

In the 1998 FPUF Production NESHAP, the EPA developed LDAR requirements for equipment leaks at slabstock foam production facilities, which are primarily work practices. The 1998 FPUF Production NESHAP for equipment leaks does not specify numeric leak definitions. These standards require an LDAR program that employs visual, audible or other methods for detecting leaks. In the technology review we conducted pursuant to CAA section 112(d)(6), we investigated an option to require an enhanced LDAR program that would require instrument monitoring for leaks using EPA Method 21 and numeric leak definitions. The costs of an enhanced LDAR program for the FPUF Production source category using either of the two analyzed sets of leak definitions are estimated to be approximately $28,200/yr, with total capital investments of approximately $32,400. Reduction of HAP emissions are estimated to be about 0.38 tpy, with a cost effectiveness of approximately $74,000/ton HAP

reduction. Because of the high cost of these controls, we proposed (and are determining in this final rule) that it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to include the enhanced LDAR program.

4. What is our final decision for the technology review?

For the reasons provided above and in the preamble to the proposed rule, we have determined that it is necessary, pursuant to CAA section 112(d)(6), to revise the MACT standards to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities. Also explained in the preamble to the proposed rule, there are no estimated costs, industry is already complying with this HAP and HAP-based ABA prohibition in practice and reductions in allowable emissions will be achieved. As noted in section IV.A.3 of the preamble, we are promulgating this HAP and HAP-based ABA prohibition concurrently under section 112(f)(2) of the CAA to provide an ample margin of safety to protect public health. Furthermore, for the reasons discussed above and in the preamble to the proposed rule, we have determined that it is not necessary pursuant to CAA section 112(d)(6) to revise the MACT to require additional HAP emission controls for FPUF Production diisocyanate storage vessels or diisocyanate equipment leaks.

C. Startup, Shutdown and Malfunction Provisions for the FPUF Production Source Category

1. What SSM provisions did we propose for the FPUF Production source category?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008),the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under CAA section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. Consistent with *Sierra Club* v. *EPA,* the EPA proposed standards in this rule that apply at all times. In proposing the standards in this rule, the EPA took into account startup and shutdown periods and, for the reasons explained below, did not propose alternate standards for those periods. Information on periods of startup and shutdown received from the facilities in the FPUF Production industry indicated that emissions during these periods are the same as during normal operations. The primary means of compliance with the standards are through work practices and product substitutions, which eliminate the use of HAP, and are in place at all times. Therefore, we determined that separate standards for periods of startup and shutdown are not necessary.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner . . .'' (40 CFR 63.2). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the DC Circuit has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water* Agencies v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. Therefore, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See,* e.g., *Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') *See also, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.'').

In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99 percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99 percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective

actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Further, to the extent the EPA files an enforcement action against a source for violation of an emission standard, the source can raise any and all defenses in that enforcement action, and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate. Recognizing that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard, we proposed to add provisions for an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. We also proposed other regulatory provisions to specify the elements that would be necessary to establish this affirmative defense.

To address the United States Court of Appeals for the District of Columbia Circuit vacatur of portions of the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM, *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), we proposed to revise and add certain provisions to the FPUF Production rule. As described in detail below, we proposed to revise the General Provisions (Table 2) to change several of the references related to requirements that apply during periods of SSM. We also proposed to add the following provisions to the FPUF Production rule: (1) The general duty to minimize emissions at all times, (2) the requirement for sources to comply with the emission limits in the rule at all times, and (3) malfunction recordkeeping and reporting requirements.

a. 40 CFR 63.1290(d)(4) General Duty

We proposed to revise the General Provisions table (Table 2) entry for 40 CFR 63.6(e)(1)–(2) by adding rows specifically for 40 CFR 63.6(e)(1)(i), 63.6(e)(1)(ii) and 63.6(e)(1)(iii) and to include a ''no'' in the second column for the 40 CFR 63.6(e)(1)(i) entry. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We proposed instead to add general duty regulatory text at 40 CFR 63.1290(d)(4) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown and malfunction events in describing the general duty. Therefore the language the EPA proposed did not include that language from 40 CFR 63.6(e)(1).

We also proposed to include a ''no'' in the second column for the newly added 40 CFR 63.6(e)(1)(ii) entry. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant of the general duty requirement proposed to be added at 40 CFR 63.1290(d)(4).

b. Compliance With Standards

We proposed to revise the General Provisions table (Table 2) entry for 40 CFR 63.6(f) by adding a specific entry for 40 CFR 63.6(f)(1) and including a ''no'' in the second column for this entry. The current language of 40 CFR 63.6, paragraph (f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in section 63.6(f)(1) and held that the CAA requires that CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA proposed to revise the standards in this rule to apply at all times.

c. 40 CFR 63.1307(h) Recordkeeping

We proposed to revise the General Provisions table (Table 2) entry for 40 CFR 63.10(a)–(b) by adding rows specifically for 40 CFR63.10(a), 63.10(b)(1), 63.10 b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv)–(xi), 63.10(b)(2)(xii), 63.10(b)(xiii) and 63.10(b)(2)(xiv) in order to specify changes we proposed to the applicability of several of the 40 CFR63.10(b)(2) paragraphs.

In the entry for 40 CFR 63.10(b)(2)(i), we proposed to include a ''no'' in the second column. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA proposed that recordkeeping and reporting applicable to normal operations would apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods. In the entry for 40 CFR 63.10(b)(2)(ii), we proposed to include a ''no'' in the second column. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA proposed to add such requirements to 40 CFR 63.1307(h). It is not necessary to cross-reference the General Provisions because we proposed specific regulatory text addressing recordkeeping for malfunctions in the FPUF Production NESHAP. The provision in the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA proposed requirement for 40 CFR 63.1307(h) provides that for any failure to meet an applicable standard, the source is required to record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA also proposed to add to 40 CFR 63.1307(h) a requirement that sources keep records that include a list of the affected sources or equipment and actions taken to minimize emissions, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions. Examples of such methods would include product loss calculations, mass balance calculations, measurements when available or engineering judgment based on known process parameters.

The EPA proposed to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We proposed to include a ''no'' in the second column in the entry for 40 CFR 63.10(b)(2)(iv) and 63.10(b)(2)(v). When applicable, these paragraphs in the General Provisions require sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. These requirements are not appropriate because SSM plans are not (and were not) required by the FPUF Production NESHAP, and the General Provisions applicability table referenced these sections in error.

d. 40 CFR 63.1306(f) Reporting

We proposed to revise the General Provisions table (Table 2) entry for 40 CFR 63.10(d)(4)–(5) by adding a separate entry for 40 CFR 63.10(d)(5) and including a ''no'' in the second column for this 40 CFR 63.10(d)(5) entry. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. As explained above, the EPA proposed to add reporting requirements to 40 CFR 63.1306(f) in place of a cross-reference to the reporting requirements in the General Provisions. The proposed requirement for the FPUF Production standard does not include periodic SSM reports as stand-alone reports. Rather, the proposed language requires sources that fail to meet an applicable standard at any time to report the information concerning such events in reports already required under the FPUF Production standard—the semiannual report for slabstock affected sources and the annual compliance certification for molded and rebond affected sources. We describe the content of these proposed reports in section IV.C.1.c of the preamble.

Because we proposed specific recordkeeping requirements in the FPUF standard, we also proposed to eliminate the cross reference to section 63.10(d)(5)(i) that contains the description of the SSM report format and submittal schedule for the General Provisions.

The proposed rule also eliminated the cross-reference to section 63.10(d)(5)(ii). Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. These requirements are not appropriate because SSM plans are not (and were not) required by the FPUF Production NESHAP, and the General Provisions applicability table referenced this section in error.

2. How did the SSM provisions change for the FPUF Production source category?

In several prior CAA section 112 rules and in the proposed rule, the EPA included an affirmative defense to civil penalties for violations caused by malfunctions in an effort to create a system that incorporates some flexibility, recognizing that there is a tension, inherent in many types of air regulations, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source. Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense to provide a more formalized approach and more regulatory clarity. *See Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); *but see Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of ''upsets beyond the control of the permit holder.''). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. Recently, the United States Court of Appeals for the District of Columbia Circuit vacated an affirmative defense in one of the EPA's CAA Section 112 regulations. *NRDC* v. *EPA,* No. 10–1371 (D.C. Cir. April 18, 2014) 2014 U.S. App. LEXIS 7281 (vacating affirmative defense provisions in a CAA Section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the Court found: ''As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.''' *See NRDC,* 2014 U.S. App. LEXIS 7281 at *21 (''[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA.'').[2]

In light of *NRDC,* the EPA is not including a regulatory affirmative defense provision in the final rule. As explained above, if a source is unable to comply with emissions standards as a result of a malfunction, the EPA may use its case-by-case enforcement discretion to provide flexibility, as appropriate. Further, as the DC Circuit recognized, in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate. *Cf. NRDC,* 2014 U.S. App. LEXIS 7281 *at *24* (arguments that violations caused by unavoidable technology failures can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions.[3]

3. What key comments did we receive on the SSM provisions, and what are our responses?

Several comments were received regarding the proposed revisions to the SSM provisions for the FPUF Production source category. The following is a summary of one of these comments and our response to that comment. Other comments received and our responses to those comments can be found in the Comment Summary and Response document available in the docket for this action (EPA–HQ–OAR–2012–0510).

Comment: One commenter states that ''EPA is legally required to remove all unlawful exemptions from the emission standards that have previously existed for SSM and not to set any new such exemptions. The agency recognizes this is necessary and that it is important for EPA to remove these exemptions in this rulemaking. 78 FR 66,126. EPA is taking comment on the requirements it must change to comply with the DC Circuit's decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008).'' The commenter claims that equipment leaks are a kind of equipment malfunction and that EPA may not authorize any such leaks, because to do so would be in violation of CAA section 302(k) and DC Circuit precedent the *Sierra Club* v. *EPA* decision. The commenter also stated EPA's proposal to not update the leak detection and repair (LDAR) requirements is an unlawful authorization of a malfunction exemption.

Response: We disagree with the commenter's claim that the types of equipment leaks addressed in the FPUF Production NESHAP are ''malfunctions.'' Equipment leaks typically occur from equipment such as valves, transfer pumps and connectors in diisocyanate service. 40 CFR 63.1294; See also 63 FR at 53982. At the time we developed the NESHAP for this source category, we recognized that these

[2] The court's reasoning in *NRDC* focuses on civil judicial actions. The Court noted that ''EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court.'' *Id.*

[3] Although the *NRDC* case does not address the EPA's authority to establish an affirmative defense to penalties that is available in administrative enforcement actions, the EPA is not including such an affirmative defense in the final rule. As explained above, such an affirmative defense is not necessary. Moreover, assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent. *CF.* CAA section 113(e) (requiring both the Administrator and the court to take specified criteria into account when assessing penalties).

emission points regularly emit small quantities of HAP, and we promulgated standards regulating equipment leaks from these components at 40 CFR 63.1294. This provision requires flexible polyurethane foam facilities to monitor for leaks and to repair any detected leaks. This requirement does not establish any exemption, and the commenter's suggestion that leaks are ''exempt'' from regulation or that they are ''authorized'' is not supported. While any specific equipment leak is not predictable, the types of equipment leaks addressed by the regulations at 40 CFR 63.1294 are fairly routine emissions from sources and are not the type of unpredictable or infrequent event for which we cannot anticipate when, where or how they may occur and that we generally consider to be malfunctions.

4. What is the rationale for our final approach for the SSM provisions?

For the reasons provided above and in the preamble for the proposed rule, we have removed the SSM exemption from the FPUF Production NESHAP; eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption; and removed or modified inappropriate, unnecessary or redundant language in the absence of the SSM exemption. We are finalizing our proposed determination that no additional standards are needed to address emissions during startup or shutdown periods.

Furthermore, for the reasons provided in section IV.C. of the preamble, we are not including the proposed affirmative defense provisions in the final rule.

D. Electronic Reporting of Performance Test Data Provisions for the FPUF Production Source Category

1. What provisions regarding electronic reporting of performance test data did we propose for the FPUF Production source category?

As stated in the preamble to the proposed rule, the EPA proposed to take a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA proposed to require owners and operators of FPUF Production facilities to submit electronic copies of certain required performance test reports. The details are provided in the FPUF Production proposal.

2. How did the provisions regarding electronic reporting of performance test data change for the FPUF Production source category?

We reviewed the proposed provisions regarding the electronic reporting of performance test data and made minor edits to the language to clarify these requirements.

3. What key comments did we receive on the provisions regarding electronic reporting of performance test data, and what are our responses?

No comments regarding electronic reporting of performance test data were received.

4. What is the rationale for our final action regarding electronic reporting of performance test data?

For the reasons provided below, the EPA is finalizing the proposed provisions requiring owners and operators of FPUF Production facilities to submit electronic copies of certain required performance test reports.

Data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. This EPA-provided software is an electronic performance test report tool called the ERT. The ERT will generate an electronic report package which will be submitted to the Compliance and Emissions Data Reporting Interface (CEDRI) and then archived to the EPA's Central Data Exchange (CDX). A description and instructions for use of the ERT can be found at: *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site: (*http://www.epa.gov/cdx*).

The requirement to submit performance test data electronically to the EPA will not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT Web site. Further, the EPA believes, through this approach, industry will save time in the performance test submittal process. Additionally, this rulemaking benefits industry by reducing recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI will no longer be required to be kept in hard copy.

State, local and tribal agencies may benefit from more streamlined and accurate review of performance test data that will be available on the EPA WebFIRE database. Additionally, performance test data will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the preamble to the proposal.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies and the EPA significant time, money and effort while improving the quality of emission inventories and air quality regulations.

E. Clarifications to the FPUF Production NESHAP

1. What clarifications to the FPUF Production NESHAP were proposed?

The EPA proposed to revise the FPUF Production NESHAP to clarify the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities and to add a schedule for leak repairs of valves and connectors in diisocyanate service that are on a delay of repair schedule.

Specifically, the EPA proposed to clarify the leak detection methods that may be used for diisocyanate storage vessels at slabstock foam production facilities during unloading events. The current requirements allow the vapor return line to be inspected for leaks during unloading events using visual, audible or any other detection method. The EPA proposed to clarify, that ''any other detection method'' must be an instrumental detection method.

The EPA also proposed to revise the provisions regarding delay of leak repairs for valves and connectors in diisocyanate service. A delay of repair is currently allowed by the NESHAP if the owner or operator determines that diisocyanate emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from a delay of repair. However, the current provisions for these valves and connectors do not state how long such a delay may last. Under the proposed requirements, the repair must be completed as soon as practicable, but not later than 6 months after the leak is detected.

2. How did the clarifications to the FPUF Production NESHAP change?

We have not changed any aspects of the proposed rule amendments

regarding the clarification to diisocyanate storage vessels leak detection methods or the leak delay of repair requirements for valves and connectors in diisocyanate service.

3. What key comments did we receive on the clarifications to the FPUF Production NESHAP, and what are our responses?

No comments were received regarding the clarification to diisocyanate storage vessels leak detection methods, and one comment regarding the diisocyanate equipment leak delay of repair requirements for valves and connectors was received. The following is a summary of this comment and our response.

Comment: One commenter noted that the EPA proposed to allow sources to delay leak repair for 6 months in certain circumstances and stated that this is both an unreasonably long period and that it creates a 6-month exemption from the emission standards. The commenter also asserted that the 15 days allowed for repair under normal conditions is an unlawful exemption from the standard. The commenter contended that the EPA must require leak repair to occur, once detected, within the absolute minimum time needed to end each leak.

Response: EPA did not propose to revise 40 CFR 63.1294(c), the provision that specified when leaks must be repaired under normal conditions, and thus the issue of whether this provision is appropriate is outside the scope of this rulemaking. We disagree, however, that when leaks must be repaired establishes an exemption from the standard. As noted earlier in this preamble, consistent with CAA section 112(h), EPA established an LDAR program as a work practice standard in lieu of setting specific emission limits for equipment leaks. A necessary component of such a program is a requirement that the leaks be repaired within specified timeframes. The existing rules require that leak repairs be made as soon as practicable, with a first attempt required within 5 calendar days of detection, and the repairs must be completed within 15 calendar days of detection. As noted in *Technology Review and Cost Impacts for the Proposed Amendments to the Flexible Polyurethane Foam Production Source Category,* the format for these requirements was based on the requirements of the HON, 40 CFR 63, subpart H. As explained in the proposal preamble for that rule, 57 FR at 62608, these time periods are intended to provide effective emission reduction, while allowing the time necessary for scheduling of more complex repairs.

Regarding the proposed requirement that repairs to components placed on a delay of repair schedule be completed within 6 months, we note that the 1998 FPUF Production NESHAP has no requirement for when repairs must be completed for valves and connectors, while there is a requirement that pumps must be repaired within 6 months. The requirements being finalized today will ensure that repair of leaks at valves and connectors is not delayed beyond 6 months. This requirement is consistent with the existing provision for pumps. We further note that a facility may take up to 6 months to repair a leak only if the facility determines that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair. In other words, a delay of repair is allowed only when the net result is lower emissions.

4. What are our final actions to clarify the FPUF Production NESHAP?

For the reasons provided in above and in the preamble to the proposed rule, the EPA is finalizing the proposed revisions to the FPUF Production NESHAP to clarify that the reference to ''any other detection method'' for diisocyanate storage vessels leak detection methods means an instrumental detection method. We are furthermore, adding a 6-month maximum timeframe for delay of repairs for diisocyanate equipment leaks from valves and connectors.

V. Summary of Cost, Environmental and Economic Impacts

A. What are the affected facilities?

The facilities affected by this final rule include facilities with new and existing flexible polyurethane foam or rebond foam processes that emit HAP and are located at a plant site that is a major source for HAP emissions. We anticipate that 12 FPUF Production facilities currently operating in the United States will be affected by these final amendments.

B. What are the air quality impacts?

We estimate that the final amendments to the FPUF Production NESHAP will not result in any directly quantifiable reduction of actual HAP emissions. However, we estimate that the MACT-allowable HAP emissions for the FPUF Production source category will be reduced by 735 tpy. We are finalizing requirements to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities. As HAP and HAP-based ABAs are no longer used by FPUF Production facilities, no additional emission reductions will be realized as a result of these requirements, although potential increases in emissions in the future will be prevented. We do not expect any emissions impacts due to the final requirements to report performance tests through the ERT.

C. What are the cost impacts?

Under the final amendments, FPUF Production facilities are not expected to incur any costs. However, there may be small cost savings at some facilities due to reduced monitoring and recordkeeping costs. The memorandum, *Technology Review and Cost Impacts for the Proposed Amendments to the Flexible Polyurethane Foam Production Source Category* includes a complete description of the cost estimate methods prepared during the development of this rule and is available in the docket for this action (EPA–HQ–OAR–2012–0510).

Though the cost savings cannot be monetized, consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011, the electronic reporting requirements being finalized in this action for performance test reports are expected to reduce the burden for the FPUF Production facilities in the future by reducing recordkeeping costs and the costs associated data collection requests, which may be fewer or less substantial (due to performance test information being readily available on the EPA's WebFIRE database).

D. What are the economic impacts?

Since no costs or a small cost savings are expected as a result of the final amendments, there will not be any significant impacts on affected firms or their consumers as a result of this proposal.

As no small firms face significant control costs, this regulation is not expected to have a significant impact on small entities.

E. What are the benefits?

We do not anticipate any significant actual HAP emissions reductions as a result of these final amendments. However, as explained in the air quality impacts section, we are finalizing requirements to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities. Because no sources are currently using these ABAs, we expect no additional emission reductions will be realized, although increases in emissions in the future will be prevented. For the final revisions to

the FPUF Production NESHAP including changes regarding SSM, the clarification to the leak detection methods allowed for diisocyanate storage vessels, and the inclusion of a schedule for delay of leak repairs for valves and connectors, these changes may result in fewer emissions during SSM periods, less frequent SSM periods, and fewer emissions from diisocyanate storage vessels and equipment leaks. However, the possible emission reductions are difficult to quantify and are not included in our assessment of health benefits. We do not expect any emissions impacts due to the final requirements to report performance tests through the ERT.

VI. 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, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 1783.07. The information collection requirements are not enforceable until OMB approves them.

The information requirements in this rulemaking are based on the notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

The OMB previously approved the information collection requirements contained in the existing regulation being amended with this final rule (i.e., 40 CFR part 63, subparts III) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

We estimate approximately 12 regulated entities are currently subject to 40 CFR part 63, subpart III, and will be subject to all final standards. The total annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for subpart III (FPUF Production), including today's final amendments, is 882 labor hours per year at a total labor cost of $46,810 per year, and total non-labor capital and operation and maintenance costs of $0 per year.

The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 60 hours per year at a total labor cost of $3,234 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. According to the SBA small business standards definitions, for the FPUF Production source category, which has the NAICS code of 326150 (i.e., Urethane and Other Foam Product (except Polystyrene) Manufacturing), the SBA small business size standard is 500 employees.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Three facilities, or 25 percent of the 12 affected facilities, are small entities. Total annualized costs for the final rule are estimated to be $0, and no small entities are projected to incur costs. Because HAP ABAs are no longer used by FPUF Production facilities, there are no impacts on any entities subject to this rulemaking.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local or tribal governments, in the aggregate, or the private sector in any one year. This final rule is not expected to impact state, local or tribal governments, and FPUF Production facilities are not expected to incur any costs as a result of this final rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule contains no requirements that apply to such governments nor does it impose obligations upon them.

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 action will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law, and none of the facilities subject to this action are owned or operated by state governments. Thus, Executive Order 13132 does not apply to this action.

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). There are no FPUF Production facilities that are within 3 miles of tribal lands. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA solicited comments on this action from tribal officials, but received none.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action will not relax the control measures on existing regulated sources, and the EPA's risk assessments (included in the docket for this action) demonstrate that the regulation, as amended to include today's final changes, is health protective.

H. Executive Order 13211: Actions Concerning Regulations 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 (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable VCSs. However, we identified no such standards, and none were brought to our attention in comments. Therefore, the EPA has decided to continue to use EPA Method 25A, ''Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer,'' 40 CFR part 60, Appendix A, to measure organic compound concentrations.

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.

To gain a better understanding of the FPUF Production source category and near-source populations, the EPA conducted a proximity analysis at a study area of 3 miles of the facilities in the source category prior to the November 2013 proposal, and revised the analysis for this final rulemaking. This analysis identifies, on a limited basis, the subpopulations that may be exposed to air pollution from the regulated sources, and thus, are expected to benefit most from this regulation. The analysis does not quantify the level of risk faced by those individuals or communities. The revised proximity analysis shows that most demographic categories are within 20 percent of their corresponding national averages, except for the African American population, which exceeds the national average by 53 percent (19 percent versus 13 percent). To the extent that any minority, low-income or indigenous subpopulation is disproportionately impacted by hazardous air pollutant emissions due to the proximity of their homes to sources of these emissions, that subpopulation also stands to see increased environmental and health benefits from the emission reductions called for by this rule. The revised proximity analysis results are presented in the July 2014 memorandum titled, *Final Environmental Justice Review: Flexible Polyurethane Foam Production,* a copy of which is available in the docket for this action (EPA–HQ–OAR–2012–0510).

The EPA has determined that the current health risks posed by emissions from the FPUF production source category are acceptable and, along with the existing NESHAP, as modified to include the HAP and HAP-based ABA prohibition that we are finalizing today, provide an ample margin of safety to protect public health and prevent adverse environmental effects. Additionally, the final changes to the standard increase the level of environmental protection for all affected populations by ensuring no future emissions increases from the source category.

K. Congressional Review Act

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. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 15, 2014.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 29, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection agency is amending title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

■ 2. Section 63.1290 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 63.1290 Applicability.

* * * * *

(c) A process meeting one of the following criteria listed in paragraphs (c)(1) and (2) of this section shall not be subject to the provisions of this subpart:

(1) A process exclusively dedicated to the fabrication of flexible polyurethane foam; or

(2) A research and development process.

(d) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) Equipment leak requirements of § 63.1294 shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator shall operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 3. Section 63.1291 is amended by revising paragraph (a) to read as follows:

§ 63.1291 Compliance schedule.

(a) Existing affected sources shall be in compliance with all provisions of this subpart no later than October 8, 2001, with the exception of § 63.1297. Affected sources subject to the requirements of § 63.1297 shall be in compliance with the requirements of this section on or before November 13, 2014.

* * * * *

■ 4. Section 63.1292 is amended by:

■ a. Revising the definitions for ''HAP-based,'' ''Reconstructed source,'' ''Storage vessel'' and ''Transfer pump''; and

■ b. Removing the definitions for ''High-pressure mixhead,'' ''Indentation Force Deflection (IFD),'' ''In HAP ABA service,'' ''Recovery device,'' ''Run of foam,'' and ''Transfer vehicle''.

The revisions read as follows:

§ 63.1292 Definitions.

* * * * *

HAP-based means to contain 5 percent (by weight) or more of HAP. This applies to equipment cleaners, mixhead flushes, mold release agents and ABA.

* * * * *

Reconstructed source means an affected source undergoing reconstruction, as defined in subpart A of this part. For the purposes of this subpart, process modifications made to stop using HAP ABA or HAP-based ABA to meet the requirements of this subpart shall not be counted in determining whether or not a change or replacement meets the definition of reconstruction.

* * * * *

Storage vessel means a tank or other vessel that is used to store diisocyanates for use in the production of flexible polyurethane foam. Storage vessels do not include vessels with capacities smaller than 38 cubic meters (or 10,000 gallons).

Transfer pump means all pumps used to transport diisocyanates that are not metering pumps.

■ 5. Section 63.1293 is revised to read as follows:

§ 63.1293 Standards for slabstock flexible polyurethane foam production.

Each owner or operator of a new or existing slabstock affected source shall comply with §§ 63.1294, 63.1297, and 63.1298.

■ 6. Section 63.1294 is amended by revising paragraphs (a)(1)(i), (c), and (d)(2)(ii), and by adding paragraph (d)(2)(iii) to read as follows:

§ 63.1294 Standards for slabstock flexible polyurethane foam production—diisocyanate emissions.

(a) * * *

(1) * * *

(i) During each unloading event, the vapor return line shall be inspected for leaks by visual, audible, or an instrumental detection method.

* * * * *

(c) *Other components in diisocyanate service.* If evidence of a leak is found by visual, audible, or an instrumental detection method, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section. The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) * * *

(2) * * *

(ii) The purged material is collected and destroyed or recovered in a control device when repair procedures are effected, and

(iii) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

* * * * *

§ 63.1295 [Removed and Reserved]

■ 7. Remove and reserve § 63.1295.

§ 63.1296 [Removed and Reserved]

■ 8. Remove and reserve § 63.1296.

■ 9. Revise § 63.1297 to read as follows:

§ 63.1297 Standards for slabstock flexible polyurethane foam production—HAP ABA.

Each owner or operator of a new or existing slabstock affected source shall not use HAP or a HAP-based material as an ABA.

■ 10. Revise § 63.1298 to read as follows:

§ 63.1298 Standards for slabstock flexible polyurethane foam production—HAP emissions from equipment cleaning.

Each owner or operator of a new or existing slabstock affected source shall not use HAP or a HAP-based material as an equipment cleaner.

§ 63.1299 [Removed and Reserved]

■ 11. Remove and reserve § 63.1299.

■ 12. Revise § 63.1302 to read as follows:

§ 63.1302 Applicability of subpart A requirements.

The owner or operator of an affected source shall comply with the applicable requirements of subpart A of this part, as specified in Table 1 of this subpart.

■ 13. Section 63.1303 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing paragraphs (a)(3) and (a)(4);

■ c. Revising paragraph (b); and

■ d. Removing paragraphs (c), (d) and (e).

The revisions read as follows:

§ 63.1303 Monitoring requirements.

* * * * *

(a) *Monitoring requirements for storage vessel carbon adsorption systems.* Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) shall monitor the concentration level of the HAP or the organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system at the frequency specified in paragraph (a)(1) or (2) of this section.

* * * * *

(b) Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) shall monitor the concentration level of total organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system using 40 CFR part 60, Appendix A, Method 25A, reported as propane. The measurement shall be conducted over at least one 5-minute interval during which the storage vessel is being filled.

§ 63.1304 [Removed and Reserved]

■ 14. Remove and reserve § 63.1304.

■ 15. Section 63.1306 is amended by:

■ a. Removing paragraph (c);

■ b. Redesigating paragraphs (d) and (e) as paragraphs (c) and (d);

■ c. Revising newly redesignated paragraphs (c) introductory text and (c)(3);

■ d. Revising newly redesignated paragraph (d);

■ e. Revising paragraph (f);

■ f. Redesignating paragraph (g) as paragraph (e);

■ g. Revising newly redesignated paragraphs (e)(1) and (2); and

■ h. Adding a new paragraph (g).

The addition and revisions read as follows:

§ 63.1306 Reporting requirements.

* * * * *

(c) *Notification of compliance status.* Each affected source shall submit a notification of compliance status report no later than 180 days after the compliance date. For slabstock affected sources, this report shall contain the information listed in paragraphs (c)(1) through (3) of this section, as applicable. This report shall contain the information listed in paragraph (c)(4) of this section for molded foam processes and in paragraph (c)(5) of this section for rebond foam processes.

* * * * *

(3) A statement that the slabstock foam affected source is in compliance with §§ 63.1297 and 63.1298, or a statement that slabstock foam processes at an affected source are in compliance with §§ 63.1297 and 63.1298.

* * * * *

(d) *Semiannual reports.* Each slabstock affected source shall submit a report containing the information specified in paragraphs (d)(1) through (3) of this section semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date that the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date that the Notification of Compliance Status Report is due.

(1) For sources complying with the storage vessel provisions of § 63.1294(a) using a carbon adsorption system, unloading events that occurred after breakthrough was detected and before the carbon was replaced.

(2) Any equipment leaks that were not repaired in accordance with §§ 63.1294(b)(2)(iii) and 63.1294(c).

(3) Any leaks in vapor return lines that were not repaired in accordance with § 63.1294(a)(1)(ii).

(e) * * *

(1) The compliance certification shall be based on information consistent with that contained in § 63.1308, as applicable.

(2) A compliance certification required pursuant to a state or local operating permit program may be used to satisfy the requirements of this section, provided that the compliance certification is based on information consistent with that contained in § 63.1308, and provided that the Administrator has approved the state or local operating permit program under part 70 of this chapter.

* * * * *

(f) *Malfunction reports.* If a source fails to meet an applicable standard, slabstock affected sources shall report such events in the next semiannual report and molded and rebond affected sources shall report such events in the next annual compliance certification. Report the number of failures to meet an applicable standard. For each instance, report the date, time and duration of each failure. For each failure, the report shall include a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(g) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you shall submit the results of the performance tests, including any associated fuel analyses, following the procedure specified in either paragraph (g)(1) or (g)(2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*),, the owner or operator shall submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*). Performance test data shall be submitted in a file format generated through the use of the EPA's ERT. Alternatively, the owner or operator may submit performance test data in an electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), shall submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disk, flash drive or other commonly used electronic storage media to the EPA. The electronic media shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

■ 16. Section 63.1307 is amended by:

■ a. Removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively;

■ b. Revising the newly redesignated paragraphs (a)(2) introductory text, (a)(2)(ii), and (a)(3) introductory text;

■ c. Revising paragraph (b)(1);

■ d. Revising paragraphs (b)(3) introductory text, (b)(3)(i) introductory text and (b)(3)(i)(B);

■ e. Removing paragraph (b)(3)(i)(C);

■ f. Revising paragraphs (b)(3)(ii) introductory text and (b)(3)(ii)(A);

■ g. Removing paragraph (b)(3)(ii)(D);

■ h. Redesignating paragraphs (b)(3)(ii)(E) through (H) as (b)(3)(ii)(D) through (G);
■ i. Revising paragraph (c);
■ j. Removing paragraph (d);
■ k. Redesignating paragraphs (e) through (h) as (d) through (g);
■ l. Revising newly redesignated paragraph (e); and
■ m. Adding new paragraph (h).

The additions and revisions read as follows:

§ 63.1307 Recordkeeping requirements.

* * * * *

(a) * * *

(2) For storage vessels complying through the use of a carbon adsorption system, paragraphs (a)(2)(i) or (ii), and paragraph (a)(2)(iii) of this section.

* * * * *

(ii) For affected sources monitoring at an interval no greater than 20 percent of the carbon replacement interval, in accordance with § 63.1303(a)(2), the records listed in paragraphs (a)(2)(ii)(A) and (B) of this section.

* * * * *

(3) For storage vessels complying through the use of a vapor return line, paragraphs (a)(3)(i) through (iii) of this section.

* * * * *

(b) * * *

(1) A list of components in diisocyanate service.

* * * * *

(3) When a leak is detected as specified in §§ 63.1294(b)(2)(ii) and 63.1294(c), the requirements listed in paragraphs (b)(3)(i) and (ii) of this section apply:

(i) Leaking equipment shall be identified in accordance with the requirements in paragraphs (b)(3)(i)(A) and (B) of this section.

* * * * *

(B) The identification on equipment may be removed after it has been repaired.

(ii) The information in paragraphs (b)(2)(ii)(A) through (G) shall be recorded for leaking components.

(A) The operator identification number and the equipment identification number.

* * * * *

(c) The owner or operator of an affected source subject to § 63.1297 shall maintain a product data sheet for each ABA used which includes the HAP content, in kg of HAP/kg solids (lb HAP/lb solids).

* * * * *

(e) The owner or operator of an affected source following the compliance methods in § 63.1308(b)(1) shall maintain records of each use of a vapor return line during unloading, of any leaks detected during unloading, and of repairs of leaks detected during unloading.

* * * * *

(h) *Malfunction records.* Records shall be kept as specified in paragraphs (h)(1) through (3) of this section for affected sources. Records are not required for emission points that do not require control under this subpart.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure, record the date, time and duration of the failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1290(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

■ 17. Section 63.1308 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraphs (b)(3), (b)(6), and (c);
■ c. Removing paragraph (d); and
■ d. Redesignating paragraph (e) as (d).

The revisions read as follows:

§ 63.1308 Compliance demonstrations.

(a) For each affected source, compliance with the requirements described in Tables 2 and 3 of this subpart shall mean compliance with the requirements contained in §§ 63.1293 through 63.1301, absent any credible evidence to the contrary.

* * * * *

(b) * * *

(3) For each affected source complying with § 63.1294(a) in accordance with § 63.1294(a)(2) through the alternative monitoring procedures in § 63.1303(a)(2), each unloading event that the diisocyanate storage vessel is not equipped with a carbon adsorption system, each time that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(b)(1) or (2) at the interval established in the design analysis, and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough;

* * * * *

(6) For each affected source complying with § 63.1294(c), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calendar day (with the exception of situations meeting the criteria of § 63.1294(d)).

(c) *Slabstock affected sources.* For slabstock foam affected sources, failure to meet the requirements contained in §§ 63.1297 and 63.1298, respectively, shall be considered a violation of this subpart. Violation of each item listed in the following paragraphs shall be considered a separate violation.

(1) For each slabstock foam affected source subject to the provisions in § 63.1297, each calendar day that a HAP ABA or HAP-based material is used as an ABA;

(2) For each slabstock foam affected source subject to the provisions of § 63.1298, each calendar day that a HAP-based material is used as an equipment cleaner.

* * * * *

§ 63.1309 [Amended]

■ 18. Section 63.1309 is amended by removing paragraph (b)(4) and redesignating paragraph (b)(5) as (b)(4).

Table 1 to Subpart III of Part 63 [Removed]

■ 19. Remove Table 1 to Subpart III of part 63.

Table 2 to Subpart III of Part 63 [Redesignated as Table 1 to Subpart III of Part 63]

■ 20. Redesignate Table 2 to Subpart III of Part 63 as Table 1 to Subpart III of Part 63 and amend newly redesignated Table 1 by:
■ a. Revising the heading;
■ b. Removing entry § 63.6(e)(1)-(2);
■ c. Adding entries § 63.6(e)(1)(i), § 63.6(e)(1)(ii), and § 63.6(e)(1)(iii);
■ d. Removing entry § 63.6(e)(3);
■ e. Adding entry § 63.6(e)(2)–(3):
■ f. Removing entry § 63.6(f)–(g);
■ g. Adding entries § 63.6(f)(1), § 63.6(f)(2)–(3), and § 63.6(g);
■ h. Removing entry § 63.10(a)–(b);
■ i. Adding entries § 63.10(a), § 63.10(b)(1), § 63.10(b)(2)(i), § 63.10(b)(2)(ii), § 63.10(b)(2)(iii), § 63.10(b)(2)(iv)–(xi), § 63.10(b)(2)(xii), § 63.10(b)(2)(xiii), § 63.10(b)(2)(xiv), and § 63.10(b)(3);
■ j. Removing entry § 63.10(d)(4)–(5); and
■ k. Adding entries § 63.10(d)(4) and § 63.10(d)(5).

The revision and additions read as follows:

TABLE 1 TO SUBPART III OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III

Subpart A reference	Applies to subpart III	Comment
*	*	*
§ 63.6(e)(1)(i)	NO	See § 63.1290(d)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	NO	
§ 63.6(e)(1)(iii)	YES	
§ 63.6(e)(2)–(3)	NO	
§ 63.6(f)(1)	NO	
§ 63.6(f)(2)–(3)	YES	
§ 63.6(g)	YES	
*	*	*
§ 63.10(a)	YES	
§ 63.10(b)(1)	YES	
§ 63.10(b)(2)(i)	NO	
§ 63.10(b)(2)(ii)	NO	See § 63.1307(h) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and any actions taken at the discretion of the owner or operator to prevent recurrence of the failure to meet an applicable requirement.
§ 63.10(b)(2)(iii)	YES	
§ 63.10(b)(2)(iv)–(xi)	NO	
§ 63.10(b)(2)(xii)	YES	
§ 63.10(b)(2)(xiii)	NO	
§ 63.10(b)(2)(xiv)	YES	
§ 63.10(b)(3)	YES	
*	*	*
§ 63.10(d)(4)	YES	
§ 63.10(d)(5)	NO	See § 63.1306(f) for malfunction reporting requirements.
*	*	*

Table 3 to Subpart III of Part 63 [Redesignated as Table 2 to Subpart III of Part 63]

■ 21. Redesignate Table 3 to Subpart III of Part 63 as Table 2 to Subpart III of Part 63 and amend newly redesignated Table 2 by:

■ a. Revising the heading;

■ b. Removing entries for HAP ABA storage vessels § 63.1295, HAP ABA pumps § 63.1296(a), HAP ABA valves § 63.1296(b), HAP ABA connectors § 63.1296(c), Pressure relief devices § 63.1296(d), Open-ended valves or lines § 63.1296(e), and Production line § 63.1297; and

■ c. Adding an entry for ABAs § 63.1297.

The revision and addition read as follows:

TABLE 2 TO SUBPART III OF PART 63—COMPLIANCE REQUIREMENTS FOR SLABSTOCK FOAM PRODUCTION AFFECTED SOURCES

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
*	*	*	*	*	*
ABAs § 63.1297	N/A	§ 63.1297		§ 63.1307(e)	

Table 4 to Subpart III of Part 63 [Removed]

■ 22. Remove Table 4 to Subpart III of Part 63.

Table 5 to Subpart III of Part 63 [Redesignated as Table 3 to Subpart III of Part 63]

■ 23. Redesignate Table 5 to Subpart III of Part 63 as Table 3 to Subpart III of Part 63 and amend newly redesignated Table 3 by revising the heading to read as follows:

Table 3 to Subpart III of Part 63—Compliance Requirements for Molded and Rebond Foam Production Affected Sources

* * * * *

[FR Doc. 2014–18734 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0444; FRL–9909–83]

Sweet Orange Peel Tincture; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sweet orange peel tincture when used as an inert ingredient not to exceed 10% (weight/weight) in pesticide formulations for use as a surfactant, fragrance, and adjuvant on all pre- and post-harvest food commodities. This regulation eliminates the need to establish a maximum permissible level for residues of sweet orange peel tincture.

DATES: This regulation is effective August 15, 2014. Objections and requests for hearings must be received on or before October 14, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0444, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0444 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0444, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of July 19, 2013 (78 FR 43117) (FRL–9392–9), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10547) by AG-Chem Consulting (12208 Quinque Lane, Clifton VA 21024), on behalf of Oro-Agri, Inc., 990 Trophy Club Drive, Trophy Club, TX 76262. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of sweet orange peel tincture when used as an inert ingredient when used as a surfactant, fragrance and adjuvant up to 10% (weight/weight) concentration in pesticide products applied to all pre- and post-harvest food commodities. That document referenced a summary of the petition prepared by AG-Chem Consulting, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sweet orange peel tincture including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with sweet orange peel tincture follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by sweet orange peel tincture as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Sweet orange peel tincture and sweet orange peel oil are chemically the same (EINECS No. 232–433–8; CAS 8028–48–6). The only difference is the method of extraction. Sweet orange peel tincture is extracted in alcohol and the extraction process leads to the formation of a ''tincture''. Sweet orange peel oil is extracted by cold press expression. Both are extracted from the same plant, *Citrus sinensis* family Rutaceae. Both forms of the sweet orange peel extract contain d-limonene as its primary component (>90%) and lesser amounts of myrcene. The EPA has conducted a ''Screening-Level Hazard Assessment'' of a class of compounds called monoterpene hydrocarbons, d-limonene and myrcene are among the monoterpene hyrdrocarbons assessed. The chemical class was ''based on structural similarity, similar molecular weights and functional groups and the expectation that inherent physicochemical, environmental and toxicological properties are predicted to be similar''. That analysis also included a review of data on sweet orange peel oil since it is a complex mixture containing greater than 90% monoterpene hydrocarbons (including d-limonene and myrcene), and is expected to have ''physicochemical, environmental and toxicological properties similar to the major components . . . limonene and myrcene''. Therefore, the Agency assessed the potential toxicity of sweet orange peel tincture based on the available toxicity data for sweet orange peel oil, and where data for sweet orange peel oil is missing, relied upon available data for the monoterpene hydrocarbons chemical class.

The acute oral and dermal toxicity of sweet orange peel oil is low. The oral LD_{50} was >5,000 milligram/kilogram (mg/kg) in rats and rabbits, respectively.

In a 28-day study with sweet orange peel oil, lesions in the non-glandular stomach and clinical chemistry were observed at 1,500 mg/kg/day (above the limit dose of 1,000 mg/kg/day) in rats. Lesions in the non-glandular stomach is attributed to the irritating property of the chemical. The NOAEL was 600 mg/kg/day.

In a combined reproductive/developmental toxicity screening test with sweet orange peel oil, stillbirths and pup mortality were observed at 1,500 mg/kg/day. The offspring NOAEL was 750 mg/kg/day. Signs of toxicity were not observed in maternal rats, the NOAEL was 1,500 mg/kg/day.

Evidence of mutagenicity was not observed in the Ames test. Although evidence of mutagenicity was observed in mouse lymphoma assay, it was noted that cytotoxic concentrations were not reported and this could contribute to an inflated mutation rate. In addition, d-limonene was not mutagenic in an Ames test, mouse lymphoma, sister chromatid exchange nor in chromosome aberrations in Chinese hamster ovary cells assays. Therefore, based on the weight of evidence sweet orange peel tincture is not expected to be mutagenic.

Evidence of immunotoxicity was not observed. Sweet orange peel oil exhibited no effects on cell-mediated or humoral immune response at doses up to 2,500 mg/kg/day in a plaque-forming cell assay in mice.

Although a carcinogenicity study was not available for sweet orange peel tincture, carcinogenicity studies were available in the rat and mouse for d-limonene. An increased incidence of tumor formation was not observed in a 2 year carcinogenicity study on female rats or in male and female mice treated with d-limonene up to 1,000 mg/kg/day. An increased incidence of tubular cell hyperplasia, adenomas, and adenocarcinomas of the kidney was observed in the male rat. However, these lesions are related to the accumulation of the alpha 2u-globulin protein which is specific to the male rat and is not relevant for human risk assessment. Based on this available information and the data supporting EPA's conclusion that sweet orange peel tincture is not expected to be mutagenic, EPA concludes that sweet orange peel tincture is not likely to be carcinogenic.

B. Toxicological Points of Departure/Levels of Concern

The available toxicity studies indicate that sweet orange peel tincture has low toxicity. Since no endpoint of concern was identified for sweet orange peel tincture, a qualitative risk assessment is appropriate.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sweet orange peel tincture, EPA considered exposure under the proposed exemption from the requirement of a tolerance (40 CFR 180.910 as an inert ingredient used in pesticide formulations applied to growing crops). EPA assessed dietary exposures from sweet orange peel tincture in food as follows:

Dietary exposure can occur from eating foods containing residues of sweet orange peel tincture. Because no hazard endpoint of concern was

identified for the acute and chronic dietary assessment (food and drinking water), a quantitative dietary exposure risk assessment was not conducted.

2. *Dietary exposure from drinking water.* Sweet orange peel tincture residues may be found in drinking water. However, since an endpoint of concern was not identified for the dietary assessment (food and drinking water), a quantitative dietary exposure risk assessment was not conducted.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Sweet orange peel tincture is used as an inert ingredient in pesticide products that could result in short- and intermediate-term residential exposure. However, based on the lack of toxicity, a quantitative exposure assessment from residential exposures was not performed.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found sweet orange peel tincture to share a common mechanism of toxicity with any other substances and sweet orange peel tincture does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sweet orange peel tincture does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of sweet orange peel oil, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children, and has conducted a qualitative assessment. As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate point of departure (PODs) to ensure that an adequate MOE exists.

Based on the lack of any endpoints of concern, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to sweet orange peel tincture residues.

V. Other Considerations

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for sweet orange peel tincture (CAS Reg. No. 8028–48–6) when used as an inert ingredient in pesticide formulations for use as a surfactant, fragrance and adjuvant up to 10% (weight/weight) on all pre- and post-harvest food commodities.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption to the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by alphabetically adding entry for ''Sweet orange peel tincture * * *'' after the entry for ''Sulfuric acid * * *'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Pesticide chemical	Limits	Uses
*	*	*
Sweet orange peel tincture (CAS Reg. No. 8028–48–6).	Not to exceed 10% (weight/weight) in pesticide formulation	Surfactant, fragrance, related adjuvants of surfactants.
*	*	*

[FR Doc. 2014–19450 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 14–1064; MB Docket No. 08–243; RM–11490]

Radio Broadcasting Services; Charlotte Amalie and Christiansted, Virgin Islands, and Culebra, Puerto Rico.

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies the Petition for Reconsideration filed by OCC Acquisitions, Inc. First, we reject OCC Acquisitions, Inc.'s argument that La Mas Z Radio Corporation's expression of interest for vacant Channel 237B at Charlotte Amalie, Virgin Islands is a sham. Next, we dismiss as procedurally defective OCC Acquisitions, Inc.'s argument that we should have considered the option of retaining vacant Channel 271B at Charlotte Amalie and adding Channel 237B at that community because this allotment scheme is preferable to the substitution of Channel 237B for Channel 271B at Charlotte Amalie and grant of the Station WNVE(FM) Application. Finally, we conclude that no error was committed in this case by placing the reimbursement responsibility on the ultimate permittee of Channel 237B at Charlotte Amalie, Virgin Islands.

DATES: August 15, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* MB Docket No. 08–243, adopted July 24, 2014, and released July 25, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Memorandum Opinion and Order* to the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Petition for Reconsideration was denied.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 2014–19411 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–284; RM–11704; DA 14–1058]

Radio Broadcasting Services; Evart and Ludington, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Synergy Lakeshore Licenses, LLC, deletes vacant Channel 274A at Evart and modifies WGHN, Inc.'s construction permit from Channel 249A to Channel 242A at Ludington. We also modify Stations WMOM(FM), Pentwater, Michigan from Channel 242A to Channel 274A and WMLQ(FM), Manistee, Michigan from Channel 282A to Channel 249A. The Media Bureau's Consolidated Data Base System (CDBS) will reflect the reserved channel assignments for Station WMOM(FM) and Station WMLQ(FM). *See* Supplementary Information.

DATES: Effective September 8, 2014.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* adopted July 24, 2014, and released July 25, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

In regards to the reimbursement issue, we disagree with WGHN, Inc. and Synergy Lakeshore Licenses, LLC that Roy Henderson should be required to reimburse the parties although he was the original Petitioner of the Evart allotment because Henderson was not the ultimate permittee of Channel 274A at Evart, Michigan. Although Bay View Broadcasting Inc. has filed a construction permit for Channel 242A at Pentwater, it states that Station WMOM(FM) still operates on its original Channel 274A at Pentwater. Additionally, Synergy Lakeshore Licenses, LLC, licensee of Station WMLQ(FM) has not filed an application for Channel 282A at Manistee, Michigan, but the station still operates on its original Channel 249A. Therefore, since we delete Channel 274A at Evart and return Stations WMLQ(FM) and WMOM(FM) to their original channels, we find that no party is responsible for reimbursement expenses. In regards to the Ludington allotment, WGHN, Inc. has voluntarily consented to the channel change, so we conclude that no party is required to reimburse WGHN, Inc. for the costs of filing an application to specify Channel 242A at Ludington.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Evart, Channel 274A, Channel 249A at Ludington, and by adding Channel 242A at Ludington.

[FR Doc. 2014–19402 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–XD422

Reef Fish Fishery of the Gulf of Mexico; 2014 Commercial and Recreational Accountability Measures and Closures for Gulf of Mexico Greater Amberjack

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial and recreational greater amberjack in the Gulf of Mexico (Gulf) reef fish fishery for the 2014 fishing year through this temporary final rule. This rule adjusts the 2014 recreational annual catch target (ACT) (equal to the recreational quota) and annual catch limit (ACL), based on final landings data from 2013, and closes the commercial and recreational sectors for Gulf greater amberjack. NMFS has determined that the commercial and recreational annual catch targets (ACTs) (equal to the commercial and recreational quotas, respectively) for Gulf greater amberjack will be reached by August 24, 2014. Therefore, NMFS closes the commercial and recreational sectors for greater amberjack in the Gulf exclusive economic zone (EEZ) at 12:01 a.m., local time, August 25, 2014, until January 1, 2015. These closures are necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective 12:01 a.m., local time on August 25, 2014, until 12:01 a.m., local time on January 1, 2015, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the reef fish fishery of the Gulf, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All greater amberjack weights discussed in this temporary rule are in round weight, which are equal to whole weight.

The commercial ACL for Gulf greater amberjack is 481,000 lb (218,178 kg), as specified in 50 CFR 622.41(a)(1), and the commercial ACT (equivalent to the commercial quota) is 409,000 lb (185,519 kg), as specified in 50 CFR 622.39(a)(1)(v).

The 2014 recreational ACL for Gulf greater amberjack is 1,299,000 lb (589,216 kg) and the recreational ACT (recreational quota) is 1,130,000 lb (512,559 kg) as specified in 50 CFR 622.41(a)(2)(iii) and 50 CFR 622.39(a)(2)(ii), respectively. However, because preliminary landings data indicated an overage of the recreational ACL of 267,488 lb (121,331 kg) in 2013, NMFS implemented AMs to reduce the recreational ACT and ACL in 2014. The recreational ACT was reduced to 862,512 lb (391,229 kg) for 2014 and the recreational ACL was reduced to 1,031,512 lb (467,886 kg) for 2014 through a temporary rule (79 FR 22594, April 23, 2014). Landings data for the recreational sector were finalized in May 2014, and NMFS determined the final recreational overage was 241,171 lb (109,393 kg). Therefore, this rule increases the recreational ACL for 2014 to 1,057,829 lb (479,823 kg), and increases the recreational ACT for 2014 to 888,829 lb (403,166 kg).

Under 50 CFR 622.41(a)(1)(i) and 50 CFR 622.41(a)(2)(i), NMFS is required to close the commercial and recreational

sectors for greater amberjack, respectively, when the commercial ACT and recreational ACT, respectively, are reached, or are projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2014 commercial ACT and the 2014 recreational ACT will be reached by August 24, 2014. Accordingly, NMFS closes the commercial and recreational sectors for Gulf greater amberjack effective 12:01 a.m., local time, August 25, 2014, until 12:01 a.m., local time, January 1, 2015, unless changed by subsequent notification in the **Federal Register**.

The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having greater amberjack aboard must have landed, bartered, traded, or sold such greater amberjack prior to 12:01 a.m., local time, August 25, 2014. During the commercial closure, the sale or purchase of greater amberjack taken from the EEZ is prohibited. During the recreational closure, the bag and possession limit of greater amberjack in or from the Gulf EEZ is zero. The prohibition on sale or purchase and the bag and possession limit apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters. The prohibition on sale or purchase does not apply to the sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, August 25, 2014, and were held in cold storage by a dealer or processor.

The commercial and recreational sectors for greater amberjack will reopen on January 1, 2015, the beginning of the 2015 commercial and recreational fishing seasons.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf greater amberjack and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(a)(1) and (2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule because such procedures are unnecessary and contrary to the public interest. Prior notice and opportunity for public comment is unnecessary because the AMs specified in 50 CFR 622.39(a)(1)(v) and (a)(2)(ii) state that NMFS will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for Gulf greater amberjack for the remainder of the fishing year if commercial and recreational landings, respectively, reach or are projected to reach the commercial recreational ACTs, respectively. All that remains is to notify the public of the reduced commercial and recreational fishing seasons for greater amberjack for the remainder of the fishing year.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the greater amberjack resource. Any delay in the closure of the commercial and recreational sectors could result in the ACLs being exceeded. The AMs state that if commercial and recreational landings exceed the ACL, NMFS will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the commercial and recreational ACLs and the ACTs for that following fishing year by the amount of the ACL overages in the prior fishing year. Reducing the commercial and recreational ACLs and ACTs the following fishing season could be disruptive to business plans and would provide less flexibility to fishermen.

For the aforementioned reasons, the Assistant Administrator, NMFS, also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 11, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–19343 Filed 8–12–14; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 158
Friday, August 15, 2014

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

DEPARTMENT OF ENERGY

[Docket No. EERE–2009–BT–BC–0021]

10 CFR Part 460

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)—Manufactured Housing Working Group

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting for the Manufactured Housing Working Group (MH Working Group). The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of manufactured homes, as authorized by section 413 of the Energy Independence and Security Act of 2007 (EISA).

DATES: The meetings will be held from 9:00 a.m. to 5:00 p.m.:

- August 21–22, 2014;
- September 9–10, 2014;
- September 22–23, 2014; and
- October 1–2, 2014

ADDRESSES: Unless otherwise specified in a subsequent **Federal Register** notice and email blasts, the meetings will be held at U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Joe Hagerman, Senior Advisor, Building Technologies Office, EE–5B, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: 202–586–4549; Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting

The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of manufactured homes, as authorized by section 413 of the Energy Independence and Security Act of 2007 (EISA).

Public Participation

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise ASRAC staff as soon as possible by emailing *asrac@ee.doe.gov* to initiate the necessary procedures. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

Members of the public will be heard in the order in which they request to make a statement at the public meeting. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. A third-party neutral facilitator will make every effort to allow the presentations of views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. Written comments are welcome from all interested parties during the course of the negotiations. Any comments submitted must identify the Manufactured Housing Working Group, and provide docket number EERE–2009–BT–BC–0021. Comments may be submitted using any of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments.
2. Email: *asrac@ee.doe.gov.* Include docket number EERE–2009–BT–BC–0021 in the subject line of the message.
3. Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024.

Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in

the index may be publicly available, such as information that is exempt from public disclosure.

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

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–19299 Filed 8–14–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 129

[Docket No.: FAA–2014–0500; Notice No. 14–07]

RIN 2120–AK30

Fuel Tank Vent Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would amend certain airworthiness regulations for transport category airplanes to require fuel tank designs that prevent a fuel tank explosion caused by flame propagation through the fuel tank vents from external fires. This action would add a new requirement for fuel tank vent fire protection and would increase the time available for passenger evacuation and emergency response. This proposed amendment would apply to applications for new type certificates and certain applications for amended or supplemental type certificates. It would also require certain airplanes produced in the future and operated by air carriers to meet the new standards.

DATES: Send comments on or before November 13, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0500 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Mike Dostert, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057–3356; telephone (425) 227–2132; facsimile (425) 227–1149; email *Mike.Dostert@faa.gov.*

For legal questions concerning this action, contact Sean Howe, Office of the Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2591; facsimile (425) 227–1007; email *Sean.Howe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

I. Overview of Proposed Rule

A. General

This proposed rule would prevent fuel tank explosions caused by ignition (from potential external ignition sources) of fuel vapor present in or exiting through the fuel tank vent outlets. Ignition sources may include, but are not limited to, ground handling equipment, fuel fires that result from refueling spills, or ground fire that may be present following a survivable crash landing in which the fuel tank and the vent system remain intact. The FAA has determined that a means to prevent propagation of flame [1] from external sources into the tank through the fuel tank vents, such as flame arrestors or a means of inerting the fuel tanks, could be used to prevent or delay fuel tank explosions following certain accidents. This prevention or delay would provide time for the safe evacuation of passengers from the airplane.

This proposed rule would apply to applications for new type certificates and applications for amended or supplemental type certificates on significant product level change projects in which Title 14, Code of Federal Regulations (14 CFR) 25.975, *Fuel tank vents and carburetor vapor vents,* is applicable to a changed area. We are also proposing a new operating requirement applicable to newly produced airplanes that are issued an original airworthiness certificate after a specified date, per 14 CFR part 121, *Operating Requirements: Domestic, Flag, and Supplemental Operations,* and 14 CFR part 129, *Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage.* We do not propose to require retrofit of the existing fleet.

Currently, there is not an advisory circular (AC) that describes compliance means for protection of fuel tank vents from external ignition sources. We have provided compliance means information to applicants for type certificates through project-specific issue papers. These issue papers describe how to demonstrate that flame will not progress through the fuel tank vents into the fuel tank.

Concurrent with the publication of this proposal, we are also publishing for

[1] Flame propagation is defined as the spread of a flame in a combustible environment outward from the point at which the combustion started.

comment an associated draft AC 25.975–X that will provide applicants with one acceptable means of compliance for preventing propagation of flames through the fuel tank vents.

B. Total Costs and Benefits of This Proposed Rule

The FAA finds the proposed rule to be cost-beneficial because the costs of the rule are low enough that the expected benefits of preventing just two fatalities would outweigh the expected costs ($4.9 million in present value benefits versus $4.4 million in present value costs). If this action is not taken, a hazard would continue to exist even though effective and low-cost means are available to minimize or eliminate it.

II. Background

A. Statement of the Problem

Fires outside of the airplane fuel tanks can be caused by events such as fuel spilled during refueling, fuel and oil spillage following survivable accidents from engines that separate from the airplane, or leaking airplane fuel tanks. In some cases, external fires have ignited fuel vapors that exit the fuel tank vents, resulting in flames traveling through the vent lines into the fuel tank, causing fuel tank explosions. These explosions have caused fatalities to passengers and have prevented emergency personnel from assisting survivors.

During an industry review of potential post-crash survivability, the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee [2] determined that four fuel tank explosions resulting from post-crash fires could have been avoided if flame arrestors or surge tank explosion suppression systems [3] had been installed in the airplane fuel tank vents [4]. The SAFER committee examined methods of preventing fuel tank explosions following impact survivable accidents. Options included controlling the fuel tank flammability using nitrogen inerting systems, using fire suppression systems, and installation of flame arrestors.

The SAFER committee determined the most practical means of preventing post-crash fuel tank explosions was the use of flame arrestors. Flame arrestors or suppression systems delay propagation of ground fires into the fuel tank and the subsequent explosions, providing additional time for the safe evacuation of passengers. Flame arrestors stop the flame from traveling through the fuel tank vents by quenching the flame. Flame arrestors are typically made of numerous small stainless steel passages that remove heat from the flame so it dies out before passing through the vent. Flame arrestors for a typical transport airplane range in weight from 2 to 4 pounds each.

The current airworthiness standards related to fuel system explosion prevention in 14 CFR 25.981 include requirements to prevent ignition inside the fuel tanks caused by system failures or external heating of the fuel tank walls. The fuel tank venting standards also include requirements to ensure fuel tank structural integrity following failures of the refueling system that could result in overfilling of the fuel tanks or clogging of the vents due to ice. Additionally, § 25.954, *Fuel system lightning protection,* requires fuel tank vents be designed and arranged to prevent the ignition of fuel vapor within the system by lightning strikes.

B. History

In 1995, based on the SAFER Committee report noted above, the FAA issued the notice of proposed rulemaking (NPRM) entitled, ''Fuel System Vent Fire Protection,'' (60 FR 6632), dated February 2, 1995. This notice proposed a requirement for fuel tank vent fire protection in new type design transport airplanes and retrofit of the existing fleet of transport category airplanes through an amendment of operating rules. Comments received in response to the notice questioned the accuracy of the FAA's economic analysis related to the proposed retrofit requirement. Comments also indicated that additional guidance, in the form of an AC, should be developed to provide an acceptable means to qualify flame arrestors to meet the proposed requirement.

To address these issues, the FAA obtained additional cost information from component suppliers and developed an AC that included means of compliance. In 2001, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to review the draft final rule, including the FAA's proposed disposition of public comments, and to review the draft AC. Due to the ARAC tasking, on August 23, 2002 the FAA published a notice in the **Federal Register** of withdrawal of the ''Fuel System Vent Protection'' NPRM published in 1995. As a result of industry resource issues and FAA rulemaking prioritization activities, no work was done on these ARAC taskings. The FAA published a withdrawal of the tasks on June 21, 2004.

As a result of limited ARAC resources, the FAA developed a strategy for a number of rulemaking projects that had been tasked to ARAC and issued a letter [5] dated June 14, 2005, to the head of the Transport Airplane and Engine Issues Group describing our intent to use the existing 14 CFR 21.21 (finding an ''unsafe design feature'') to address the need for flame arrestors in the fuel tank vents. Since 2005, this has resulted in new type certificated airplanes having flame arrestors.

Prior to issuance of the letter in 2005, following industry recommendations, many manufacturers voluntarily introduced flame arrestors into their new type designs. Currently, most new type designs and most newly produced transport category airplanes incorporate flame arrestors in the fuel tank vents. Additionally, several applicants have installed fuel tanks in the airplane fuselage that have vents located in areas prone to lightning strikes (defined as zone 2), such that flame arrestors were provided to prevent flame propagation into the fuel tanks to comply with § 25.954.

However, some models of newly manufactured airplanes produced under older type certificates, including business jets and smaller transport category airplanes, do not incorporate a means to prevent flame propagation through the fuel vent lines to the fuel tanks. Airplanes in 14 CFR part 121 operation that do not have such a means include older models like the DC–9, MD–80, as well as all past and currently produced DHC–8 turboprops, and Canadair Regional Jets.

As a result of the review of several fuel tank explosions on older designs, including a Philippine Airlines Boeing 737,[6] the FAA issued an airworthiness directive (AD) for Boeing Model 737 airplanes mandating incorporation of flame arrestors.[7] Early models of the 737 did not have means to prevent propagation of a flame from the fuel tank vent outlet into the fuel tanks. The Philippine explosion occurred while the airplane was parked at the gate. The ignition source that caused the explosion could not be determined.

[2] Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee final report, volume 1, FAA/AFS–80–4 dated June 26, 1973, through June 26, 1980.

[3] Surge tank explosion suppression systems were installed on some Boeing airplanes to prevent a lightning strike from igniting fuel vapor in the fuel tank vent system. These systems used light sensors that activated the discharge of fire suppression agent into the fuel tank vent surge tank to prevent the fire from traveling through the vents into the airplane fuel tanks.

[4] SAFER Report, page 49, Figure 3.

[5] Hickey, John. Letter to Craig Bolt. 14 June 2005.

[6] On May 11, 1990, a Philippine Airlines 737–300 was destroyed by a fuel tank explosion on the apron at Manila Ninoy Aquino International Airport.

[7] AD 99–03–04 BOEING: Amendment 39–11018; Docket 98–NM–50–AD; effective March 9, 1999.

However, external ignition sources such as ground handling equipment or hot surfaces on lighting located near the vent outlet were evaluated as the possible source of the ignition.

In addition to the 737 AD, we have issued other ADs to either require flame arrestors or verify their functionality on the Lockheed Model 1649A piston airplane,[8] Boeing Models 707 and 720,[9] the Beech Model 400A,[10] and the Lockheed Model 382.[11]

Since 2005, the FAA has also addressed the possibility of fuel tank ignition resulting from post-crash fire propagation through fuel vent lines with issue papers applied to specific certification projects.

However, the lack of a specific part 25 regulation has resulted in some manufacturers completing initial airplane designs and applying for a U.S. type certificate without considering the need to mitigate the risk of flame propagation through fuel vent lines. Some newly manufactured airplanes introduced into the U.S. fleet do not have flame arrestors in the fuel tank vents.[12]

III. Discussion of the Proposal

A. General

This proposal would establish a minimum time period for preventing a fuel tank explosion caused by flame propagation through the fuel tank vents of 2 minutes and 30 seconds, measured from the time a flame first impinges on any fuel tank vent. This capability would allow time to evacuate passengers and crew to a safe distance from the airplane and for emergency response to begin. The minimum performance standard in this proposal is based on a balance between the available technology, practicality considerations, and providing a satisfactory passenger evacuation safety standard.

The proposed regulatory text is intended to prevent, or at least delay, fuel tank explosions or fires caused by external fires that ignite fuel or vapor in the fuel tank. External fires may be caused by sources such as post-crash ground fires, fires resulting from fuel leakage during refueling, and ignition of fuel exiting the fuel vents. The proposal requires consideration of flames in the fuel tank vent outlets including propagation through the vent line, as well as ignition sources created by damage to the vent system caused by the external fire, such as burn-through of fuel tank vent system components or heating of the vent system components.

To limit propagation of external fires through the vent system, it is necessary to design a flame arrestor, a flame suppression device, or other system to prevent flame penetration and propagation through the airplane fuel tank vents. The minimum time period should be no less than the time required to evacuate the airplane. The FAA has previously established a performance standard that, under specified conditions, the airplane must be capable of being evacuated within 90 seconds (§ 25.803, *Emergency evacuation*). The conditions under which the airplane is evacuated assume availability of a minimum number of exits and all passengers are uninjured and physically capable of departing the airplane. This is not always the case.

In addition to time for evacuation of passengers, we have also established minimum standards for penetration of a fuel fire through the airplane fuselage to allow emergency crews time to arrive at an accident and to establish control of a fire (§ 25.856, *Thermal/Acoustic insulation materials*). Analysis of past accidents showed the greatest benefits when a minimum of 5 minutes is provided. This time includes 1 minute for a fire to penetrate the fuselage skin and an additional 4 minutes for the fire to burn through the insulation. The time of 5 minutes for penetration of a post-crash ground fire into the fuselage was based on research into studies of past accidents.[13] [14] As part of a project commissioned by the FAA, data have been gathered on the relative proportion of accidents that involve ground pooled fuel fires and statistical data on the following:

- Time to initiate an evacuation;
- Time to complete an evacuation;
- Time to arrival of fire-fighters; and
- Time for fire-fighters to establish control in a ground pool fire accident.

The data were extracted from accident reports and other information published by investigating and airworthiness authorities using the Cabin Safety Research Technical Group aircraft accident database.

Current technology flame arrestors installed in the transport fleet have been designed to have a capability to prevent flame propagation into the fuel tanks for up to 2 minutes and 30 seconds after flame enters the fuel tank vent and contacts the face of the flame arrestor.

The FAA is proposing a minimum standard of 2 minutes and 30 seconds. This time is greater than the 90 second evacuation time noted above and allows additional time for passengers to exit from the crash scene. No adverse service experience has occurred on airplanes equipped with flame arrestors that provide this amount of time. While this time is less than the 5 minute test standard required by § 25.856 for a ground fire to penetrate into the fuselage, the FAA has determined providing fuel tank vent protection in excess of 2 minutes and 30 seconds would not be practical. Comments received to the notice issued in 1995 indicated flame arrestors that meet a 5 minute standard would need to be significantly larger, weigh more, and would introduce significant pressure loss in the fuel system vent line, resulting in the need to increase the size of the vent line to meet airplane refueling performance requirements.

B. Potential for Blockage of Vents

During the approval process for the existing compliance means that use flame arrestors in the vent lines, several applicants expressed concerns that requiring flame arrestors may reduce the level of safety due to restrictions being introduced into the vents. The FAA acknowledges that introducing flame arrestors in the fuel tank vents may introduce the potential for clogging of the vent lines from ice and debris. This could result in adverse consequences like more severe tank pressures during fueling/over-fueling, greater differential pressures on the tank skins during emergency descent or defueling, reduced fuel jettison capability, and an increased risk of vent system blockage.

To address these design considerations, applicants have included positive and negative pressure relief provisions in their vent system designs. This has afforded an excellent safety record. Service experience of thousands of airplanes in the current fleet equipped with flame arrestors indicates that each of these concerns (and other such concerns not listed above) can be safely mitigated with proper design and certification of the fuel tank vent fire protection. Proposed

[8] AD 59–20–02 LOCKHEED: Effective October 15, 1959, for items (1) and (2) and December 1, 1959, for item (3).

[9] AD 67–23–02 BOEING: Amendment 39–462. Effective September 10, 1967.

[10] AD 92–16–14 BEECH: Amendment 39–8323; Docket No. 92–NM–95–AD; effective September 1, 1992.

[11] AD 2011–15–02 LOCKHEED: Amendment 39–16749; Docket No., FAA–2010–1305; effective August 19, 2011.

[12] Bombardier Q400 (Dash 8) and Canadair Regional Jets.

[13] DOT/FAA/AR–99/57, *Fuselage Burnthrough Protection for Increased Postcrash Occupant Survivability: Safety Benefit Analysis Based on Past Accidents,* September 1999.

[14] DOT/FAA/AR–09/18, *Determination of Evacuation and Firefighting Times Based on an Analysis of Aircraft Accident Fire Survivability Data,* May 2009.

[15] Details may not sum to totals due to rounding.

AC 25.975–X would provide the guidance necessary to address these issues.

C. Revise ''Fuel Tank Vents and Carburetor Vapor Vents'' (§ 25.975)

Section 25.975 currently prescribes standards for fuel tank vents but does not contain a standard for protecting the fuel tanks from external flame propagating into the tank. We propose to add a new paragraph, § 25.975(a)(7), to establish a requirement for a means to prevent the propagation of flames, for a limited time, from outside the fuel tank through the fuel tank vents that could cause a fuel tank explosion.

Means of compliance available today include incorporation of flame arrestors in the fuel system vent lines. Other means that might be available in the future include full time fuel tank inerting systems that prevent fuel tank explosions due to post-crash or other external fires.

We considered alternative technical solutions, such as mandating nitrogen inerting systems that would prevent a fuel tank explosions caused by external fires by eliminating fuel tank flammability. Current fuel tank flammability limits in § 25.981 have resulted in the use of nitrogen inerting systems in some or all fuel tanks. However, the fuel tanks become flammable during certain portions of airplane operations such as during fuel tank refueling and times when the inerting system cannot produce enough nitrogen to inert the fuel tanks. During these times, the tanks continue to be vulnerable to explosion from flame propagation through fuel system vent lines. The cost to incorporate full-time nitrogen inerting systems in all fuel tanks would be excessive.

Another alternative we considered was to continue using certification project-specific issue papers to address fuel tank vent fire protection. However, this alternative does not allow public review and comment and does not result in broad industry awareness of the need to incorporate vent system protection into new designs early in the airplane design process. In addition, this method is more costly and time consuming for both the FAA and applicants due to the need to process an issue paper identifying specific requirements for each project. Some applicants have objected to this approach, and it has proven more difficult to apply in a standardized manner.

After considering these alternatives, we have concluded that the most practical and cost effective method to address this safety issue is the incorporation of flame arrestors in the fuel system vent lines (as recommended in the SAFER committee report).

D. Newly Produced Airplanes

Parts 121 and 129 prescribe operating requirements for air carriers, including requirements for the airworthiness of each airplane. Part 121 applies to domestic operators and, for airworthiness requirements, part 129 applies to foreign operators operating U.S.-registered airplanes. We propose to add a new operating requirement that would apply to newly manufactured airplanes entering service 2 years after the effective date of this proposed regulation. This compliance time is based on the estimated time needed to design and develop a flame arrestor installation for existing airplanes. Flame arrestor technology is currently available, and adaptation of this technology to currently produced airplanes, certifying the design and incorporation of the design in production, should be achievable within the 2-year compliance time.

While this proposal does not require manufacturers of existing type designs to develop design features meeting the requirements, we anticipate operators of the affected airplane models will enter into business agreements with manufacturers to provide compliant designs that meet the proposed operating regulations. Newly manufactured airplanes that enter service typically have a minimum operating life of 20 years in passenger service. Therefore, the safety benefits of incorporating flame arrestors would be greatest in newly produced airplanes entering service.

We are not proposing a requirement to retrofit airplanes in the current fleet. This decision was based on the determination that many of the older airplane models that do not have flame arrestors are being retired. The cost to retrofit these airplanes for the safety improvement is not in the public interest.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of the proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

These analyses are summarized below.

Total Costs and Benefits of This Proposed Rule

The FAA finds the proposed rule to be cost-beneficial because the costs of the rule are low enough that the expected benefits of preventing just two fatalities would outweigh the expected costs ($4.9 million in present value benefits versus $4.4 million in present value costs). If this action is not taken, a hazard would continue to exist even though effective and low-cost means are available to minimize or eliminate it.

Who is potentially affected by this rule?

Manufacturers of newly certified part 25 airplanes and U.S. operators of these airplanes are affected by the rule as a result of its applicability to new certification part 25 airplanes. Manufacturers and operators of

currently produced part 25 airplanes (production cut-in) are affected by the rule as a result of its applicability to airplanes engaged in part 121 or 129 operations produced two years or more after the effective date of this rule.

Principal Assumptions and Sources of Information

- Discount rate is 7 percent (Office of Management & Budget, Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' October 29, 1992, p. 8).
- Value of statistical life (VSL) begins at $9.1 million in 2012 and increases thereafter by an annual growth factor of 1.0107. Memorandum: *Guidance on Treatment of the Economic Value of a Statistical Life in Department Analyses.* [February 2013]. United States, Office of the Secretary of Transportation.
- For small part 25 manufacturers: Two U.S. airplane certifications in next 10-year period, twenty-one annual U.S. deliveries per U.S. certification; three foreign airplane certifications in next 10-year period, eleven annual U.S. deliveries per foreign certification, 15-year airplane production run; 30-year retirement age. Internal FAA study.
- Current airplane models that could be affected by production cut-in requirement (Bombardier Dash 8, CJ–700, and CJ–900): FAA 2013 Fleet Forecast, Fleet Forecast Sheet, ''FAA U.S. Airlines 2013–2013 1–18–2103,'' ''Totals & FAA Tables.''
- The period of analysis for new certifications is 45 years to account for a complete product life cycle determined by a 15-year production period and a 30-year service period.
- Certification cost estimates for part 25 airplanes—Survey of small U.S. part 25 airplane manufacturers.
- Maintenance cost per airplane (every four years) for Bombardier CJ–700/CJ–900 regional jets (subject to production cut-in)—$240. This estimate is much lower than the U.S. estimate because it is for passenger airplane models, while the U.S. estimate is for business jet models. Since business jets are more prone to sit for extended periods of time, their flame arrestors can more easily be clogged by ice, mud daubers, or other debris, thus requiring more frequent and longer maintenance.
- Minimal fuel costs as flame arrestors weigh between 2 and 4 pounds each.

Costs of This Proposed Rule

The costs of the proposed rule are engineering, production, and maintenance compliance costs for newly certificated part 25 airplanes and for new production of currently-produced part 25 airplanes used in part 121 operations (production cut-in). We first estimate compliances costs for new certifications and then for the production cut-in.

Compliance Costs of New Certification Airplanes to Manufacturers and Operators

For newly certificated airplanes, compliance costs consist of engineering and production costs of U.S. manufactured airplanes delivered to U.S. operators and maintenance costs of both U.S. and foreign airplanes delivered to U.S. operators. U.S. part 25 manufacturers directly incur the engineering and production costs while U.S. operators directly incur the maintenance costs. Engineering and production costs incurred by foreign manufacturers are not included in the costs of compliance, as costs directly attributable to foreign entities are not included in the cost and benefit analysis of proposed U.S. regulations.

To calculate the cost of new U.S. certifications, we assume that all new certifications will be approved one year after the effective date of the rule, with production beginning one year later. Using an airplane life cycle model, we estimate the economic impact for two new certificates, production of 21 airplanes/certificates/year, production runs of 15 years, and an airplane retirement age of 30 years. Compliance costs per year are calculated over an airplane life cycle of 45 years.

Industry cost estimates were solicited from small part 25 manufacturers because large airplane manufacturers (Boeing and Airbus) are already compliant with the proposed rule. These cost estimates are shown in the table below.

INDUSTRY COST ESTIMATES USING FLAME ARRESTORS TO COMPLY WITH PROPOSED RULE

Cost category	Cost	Notes
Nonrecurring Engineering Costs	$142,000	per model.
Production Costs (Hardware & Installation)	3,000	per airplane (two flame arrestors @$1,500 each).
Maintenance Costs (U.S. manufacturers)	415	per airplane annually.
Maintenance Costs (Bombardier)	240	per airplane every 4 years.

The industry cost estimates consist of nonrecurring (one-time) engineering costs, production costs for two flame arrestors per airplane (one per fuel tank), and maintenance costs per airplane per year. (The Bombardier maintenance cost estimate is used for estimating production cut-in costs of compliance.) Incorporating the industry cost estimates into the airplane life cycle model, we find total costs for new certification airplanes to be $16.2 million with present value of $4.2 million. $2.2 million of these costs (present value $1.2 million) are directly incurred by U.S. manufacturers and $14.0 million (present value $2.1 million) are directly incurred by U.S. operators.[15]

Compliance Costs of Production Cut-In

In addition to the requirement applying to new certifications, the proposed rule would also require a production cut-in for currently produced part 25 airplanes used in part 121 operations.[16] To calculate this cost, we first note that the only currently produced and U.S. operated airplane models not already in compliance are the Bombardier Dash 8 turboprops and Bombardier CJ–700/CJ–900 regional jets. The final rule would apply to these Bombardier models produced beginning in 2018. Since the FAA forecasts no Dash 8 deliveries to U.S. airline operators after 2017, we expect no Dash 8 compliance cost for these operators.

The FAA does forecast the delivery of 338 CRJ–700 and 161 CRJ–900 model airplanes to U.S. airline operators over the period 2018–2033. The engineering and production compliance costs for these airplanes are not included in our cost estimates because, as noted above, costs directly incurred by foreign entities are not included in the cost and

[15] Details may not sum to totals due to rounding.

[16] We do not estimate costs for the analogous part 129 requirement as these costs are directly incurred by foreign operators.

benefit analysis of proposed U.S. regulations. Accordingly, for these airplanes we assess the impact on U.S. operators only, using Bombardier's maintenance cost estimate of $240 every four years. Allocating this cost as $60 annually and assuming a production period of 16 years, we calculate the maintenance costs for these airplanes from the first year of service to the retirement year of the last airplanes produced, using a procedure analogous to that used for new certification airplanes. We find these costs to operators to be $898,200 with present value $178,439.

Production cut-in costs of $898,200 (present value $178,439) added to new certification airplane costs of $16.2 million (present value $4.2 million) yield total rule costs of $17.1 million (present value $4.4 million).

Benefits of This Proposed Rule

Notwithstanding the absence of post-crash fuel tank explosions in recent years and lacking other sufficient bases upon which to estimate future risks, the merits of the proposed rule can be assessed by considering the number of fatalities that would need to be prevented to offset the costs of the rule.

We estimate the breakeven benefits of the rule by estimating the number of averted fatalities necessary to offset the $4.4 million present value costs of the rule. We find that just two averted fatalities would offset these estimated costs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All small U.S. manufacturers affected by this rule are wholly owned subsidiaries of large companies, who have more than 1,500 employees (the small business criterion for aircraft manufacturing) and, therefore, are not classified as small entities by the Small Business Administration. Part 121 operators would be directly affected by the average $415 annual maintenance cost per airplane. These costs are minimal, especially compared to the high cost of new part 25 airplanes.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96–39), as amended by the Uruguay Round Agreements Act (Public Law 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This proposed rule would not create an unnecessary obstacle to foreign commerce as foreign and domestic manufacturers are equally affected and its effect on part 121 operators would be domestic only.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and,

therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites 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.

The FAA 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, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by:

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item 1 above.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Amend § 25.975 by revising paragraphs (a)(5) and (a)(6), and adding a new paragraph (a)(7) to read as follows:

§ 25.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(5) There may be no point in any vent line where moisture can accumulate with the airplane in the ground attitude or the level flight attitude, unless drainage is provided;

(6) No vent or drainage provision may end at any point—

(i) Where the discharge of fuel from the vent outlet would constitute a fire hazard; or

(ii) From which fumes could enter personnel compartments; and

(7) Each fuel tank system must be designed to prevent explosions caused by propagation of flames from outside the tank through the fuel tank vents into fuel tank vapor spaces for a minimum of 2 minutes and 30 seconds of continuous exposure to flame impingement on any fuel tank vent.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 4. Add § 121.1119 to subpart AA to read as follows:

§ 121.1119 Fuel tank vent explosion protection.

(a) *Applicability.* This section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *New production airplanes.* No certificate holder may operate an airplane for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval after [insert date 2 years after effective date of rule] unless fuel tank vent system explosion prevention means meeting the requirements of § 25.975 of this chapter, are installed and operational.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 5. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 40113, 40119, 41301, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Public Law 107–71 sec. 104.

■ 6. Add § 129.119 to subpart B to read as follows:

§ 129.119 Fuel tank vent explosion protection.

(a) *Applicability.* This section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *New production airplanes.* No certificate holder may operate an airplane for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval after [insert date 2 years after effective date of rule] unless fuel tank vent system explosion prevention means meeting the requirements of § 25.975 of this chapter, are installed and operational.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on August 1, 2014.

Frank Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 2014–18959 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0569; Directorate Identifier 2014–NM–047–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by a report of loose bolts that are intended to secure the translating door crank assembly to the outside handle shaft. This proposed AD would require a detailed inspection for loose bolts on the aft translating door crank assembly, and removal and reinstallation of the bolts. We are proposing this AD to prevent loose bolts from falling out. If both bolts become loose or fall out after the door is closed and locked, the door cannot be opened from inside or outside, which could impede evacuation in the event of an emergency.

DATES: We must receive comments on this proposed AD by September 29, 2014.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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–2014–0569; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0569; Directorate Identifier 2014–NM–047–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–08, dated February 10, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There was one in-service report where the bolts securing the translating door crank assembly to the outside handle shaft were found loose. It was also found on another translating door that sealant was missing on these bolts. If both bolts become loose or fall out after the door is closed and locked, the door cannot be opened from inside or outside.
>
> The aft entry translating door and aft service translating door are classified as emergency exits. The inability to open an emergency exit could impede evacuation in the event of an emergency.
>
> This [Canadian] AD mandates the inspection of the translating door crank assemblies for loose bolts, as well as appropriate rectification [removal and reinstallation of the bolts].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0569.

Relevant Service Information

Bombardier has issued Service Bulletin 84–52–75, Revision A, dated July 11, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

''Contacting the Manufacturer'' Paragraph in This Proposed 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.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA 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 proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, or Transport Canada Civil Aviation (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.

Costs of Compliance

We estimate that this proposed AD affects 82 airplanes of U.S. registry.

We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $48,790, or $595 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2014–0569; Directorate Identifier 2014–NM–047–AD.

(a) Comments Due Date

We must receive comments by September 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4411 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of loose bolts that are intended to secure the translating door crank assembly to the outside handle shaft. We are issuing this AD to prevent loose bolts from falling out. If both bolts become loose or fall out after the door is closed and locked, the door cannot be opened from inside or outside, which could impede evacuation in the event of an emergency.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 600 flight hours or 100 days, whichever occurs first after the effective date of this AD, do a detailed inspection of the aft translating door crank assembly for loose bolts, in accordance with Part A—INSPECTION of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–75, Revision A, dated July 11, 2013. Doing the applicable actions specified in paragraph (g)(1) or (g)(2) of this AD terminates the requirements of this paragraph.

(1) If any loose bolt is found: Before further flight, remove and reinstall the translating door crank assembly bolt, in accordance with Part B—RECTIFICATION of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–75, Revision A, dated July 11, 2013.

(2) If no loose bolt is found: Within 6,000 flight hours or 36 months, whichever occurs first after the effective date of this AD, remove and reinstall the translating door crank assembly bolts, in accordance with Part B—RECTIFICATION of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–75, Revision A, dated July 11, 2013.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g)(1) and (g)(2) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–52–75, dated July 27, 2012, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York ACO, ANE–170, 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, International Branch, ANM–116, Transport Airplane 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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–08, dated February 10, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0569.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 6, 2014.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–19361 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0568; Directorate Identifier 2014–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This proposed AD was prompted by reports of fuel quantity indication malfunctions caused by fuel probe failure. This proposed AD would require identifying the part number and serial number of the fuel probes and replacing if necessary. We are proposing this AD to prevent fuel probe failure, which could lead to undetected fuel starvation and consequent dual engine in-flight flame-out.

DATES: We must receive comments on this proposed AD by September 29, 2014.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.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–2014–0568; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0568; Directorate Identifier 2014–NM–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0075R1, dated April 24, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes. The MCAI states:

> A significant number of fuel probes installed on ATR aeroplanes failed during production tests and several occurrences of fuel quantity indication malfunctions were recently reported on in-service aeroplanes.
>
> The subsequent investigation, conducted on the failed parts, confirmed a loss of ground connection on the terminal block of the fuel probe, due to an incorrect application of wiring instructions in production during fuel probe manufacturing between June 2011 and August 2013. The investigation identified a batch of parts, suspected to be affected by this manufacturing defect. Some of these probes were delivered as spares, and operators may have installed these probes on their in-service aeroplanes.
>
> In case an affected fuel probe is installed on each wing of an aeroplane, being not equipped with an independent fuel low level measurement system or an aeroplane operated in accordance with ETOPS [extended range twin operations] rules, the defected fuel probes could indicate a higher fuel quantity value than the real quantity of the on-board fuel.
>
> This condition, if not detected and corrected, could lead to an undetected fuel starvation and consequent dual engine in-flight flame out.
>
> For the reasons described above, this [EASA] AD requires the identification and replacement of the affected fuel probes.
>
> This [EASA] AD is revised to correct typographical errors.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0568.

Relevant Service Information

Zodiac Aerospace Services Europe has issued Service Bulletin 766983–28–002, dated October 15, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

''Contacting the Manufacturer'' Paragraph in This Proposed 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.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed

during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA 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 proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or ATR–GIE Avions de Transport Régional's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA 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 ''design approval holder (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 throughout this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 81 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $13,770, or $170 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional: Docket No. FAA–2014–0568; Directorate Identifier 2014–NM–075–AD.

(a) Comments Due Date

We must receive comments by September 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category; all manufacturer serial numbers qualified for extended range twin operations (ETOPS) with ATR Modification 04711.

(2) ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; certificated in any category; except as specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Airplanes modified with ATR Modification 04650.

(ii) Airplanes retrofitted as specified in ATR Service Bulletin ATR42–28–0033 or ATR42–28–0034, as applicable.

(3) ATR—GIE Avions de Transport Régional Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category; all manufacturer serial numbers; except as specified in paragraph (c)(3)(i) or (c)(3)(ii) of this AD.

(i) Airplanes modified with ATR Modification 04686.

(ii) Airplanes retrofitted as specified in ATR Service Bulletin ATR72–28–1013, ATR72–28–1022, or ATR72–28–1023, as applicable.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of fuel quantity indication malfunctions caused by fuel probe failure. We are issuing this AD to detect and correct affected fuel probes, which could lead to undetected fuel starvation and consequent dual engine in-flight flame-out.

(f) Compliance

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

(g) Part Number (P/N) and Serial Number (S/N) Inspection

Within 5,000 flight hours or 24 months, whichever occurs first after the effective date of this AD: Inspect to determine if any fuel probe has any P/N and S/N identified in table 1 to paragraph (g) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the part can be conclusively determined from that review.

TABLE 1 TO PARAGRAPH (G) OF THIS AD—AFFECTED FUEL PROBES

Airplane model	Part number	Serial number
ATR 42	766–046–2	1046 through 1083 inclusive.
ATR 42	766–047–2	1154 through 1214 inclusive.
ATR 42	766–048–2	1150 through 1197 inclusive.
ATR 42	768–055	1156 through 1227 inclusive.
ATR 42	798–038	1150 through 1238 inclusive.
ATR 72	766–793–1	1469 through 1826 inclusive.
ATR 72	766–795–2	1661 through 2093 inclusive.
ATR 72	766–796–2	1722 through 2152 inclusive.
ATR 72	766–797–2	1663 through 2051 inclusive.
ATR 72	766–983–1	2200 through 2652 inclusive.
ATR 72	768–100	1511 through 1876 inclusive.

(h) Replacement

If any fuel probe that has any part number and serial number specified in table 1 to paragraph (g) of this AD is found: Within 5,000 flight hours or 24 months, whichever occurs first after the effective date of this AD, replace the fuel probe with a serviceable fuel probe, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA); or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Note 1 to paragraph (h) of this AD: Guidance on accomplishing the replacement can be found in ATR–42 Aircraft Maintenance Manual Job Instruction Card 28–42–72, RAI 10000–001, and ATR–72 Aircraft Maintenance Manual Job Instruction Card 28–42–72, RAI 10000–002.

(i) Definition of Serviceable Fuel Probe

For the purposes of this AD, the definition of a serviceable fuel probe is specified in paragraph (i)(1) or (i)(2) of this AD.

(1) The fuel probe is not listed in table 1 to paragraph (g) of this AD.

(2) The fuel probe is listed in table 1 to paragraph (g) of this AD, but has control tag ''C'' marked on the part identification plate, as specified in Zodiac Aerospace Services Europe Service Bulletin 766983–28–002, dated October 15, 2013.

(j) Parts Installation Limitations

As of the effective date of this AD, no person may install, on any airplane, a fuel probe having any part number and serial number identified in table 1 to paragraph (g) of this AD, unless control tag ''C'' is marked on the part identification plate, as specified in Zodiac Aerospace Services Europe Service Bulletin 766983–28–002, dated October 15, 2013.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0075R1, dated April 24, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0568.

(2) For service information identified in this AD, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 6, 2014.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–19374 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2010–0682; FRL–9915–21–OAR]

RIN 2060–AQ75

Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the period for providing public comments on the June 30, 2014, proposed ''Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards'' is being extended by 60 days.

DATES: *Comments.* The public comment period for the proposed rule published June 30, 2014 (79 FR 36880), is being extended by 60 days to October 28, 2014, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 36880) for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, 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. A reasonable fee may be charged for copying. The EPA has established the official public docket for this rulemaking under Docket No. EPA–HQ–OAR–2010–0682.

Worldwide Web. The EPA Web site containing information for this rulemaking is: *http://www.epa.gov/ttn/atw/petref.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; and email address: *shine.brenda@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Ted Palma, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5470; fax number: (919) 541–0840; and email address: *palma.ted@epa.gov.* For information about the applicability of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) or the New Source Performance Standards (NSPS) to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance (OECA), telephone number: (202) 564–7027; fax number: (202) 564–0050; and email address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The EPA is extending the public comment period for an additional 60 days. The public comment period will end on October 28, 2014, rather than August 29, 2014. This will ensure that the public has sufficient time to review and comment on all of the information available, including the proposed rule and other materials in the docket.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2014.

Mary E. Henigin,

Acting Director for Office of Air Quality Planning and Standards.

[FR Doc. 2014–19281 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 79, No. 158

Friday, August 15, 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

Agricultural Marketing Service

[Doc. No. AMS–LPS–14–0052]

United States Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice, request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is seeking public comments on revising the United States Standards for Grades of Carcass Beef. USDA is requesting comments concerning, but not limited to, the beef yield grade standard and carcass maturity. The current standards do not adequately reflect the genetic and production changes that have taken place in the cattle population since 1965 when a cutability or yield grade standard was first adopted. In 1997, the maturity requirements were changed to improve uniformity and consistency. Since that time, research has indicated that carcasses from fed steers and heifers less than 30 months of age, based on dentition, should be classified ''A'' maturity for grading purposes even though the skeletal maturity characteristics of ''B'' or older may be present. Industry and other groups have discussed the possibility of changing the grade standards for carcass beef with AMS.

DATES: Comments on revising the standard are due no later than November 13, 2014.

ADDRESSES: Comments should be sent to Beef Carcass Revisions, Standardization Branch, LPS Program, AMS, USDA, 1400 Independence Ave., SW., STOP 0258, Washington, DC 20250. Comments may also be sent by fax to: (202) 690–2746 or by email to: *(beefcarcassrevisions@ams.usda.gov).* For additional information, please contact Lawrence Yates at: *Lawrence.Yates@ams.usda.gov,* or (402) 621–0836.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Carcass Beef do not appear in the Code of Federal Regulations but are maintained by USDA. These standards are located on USDA's Web site at *http://www.ams.usda.gov/AMSv1.0/LSSTDZ.* on the right side of the Web page select Standards to locate the Beef Carcass Grade Standard. To change the United States Standards for Grades of Carcass Beef, AMS plans to utilize the procedures it published in the August 13, 1997, Federal Register and that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background: Federal beef grading is a voluntary fee for service program, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). A primary purpose of grades is to divide the population of cattle and beef into uniform groups (of similar quality, yield, value, etc.), in order to facilitate marketing. Grades provide a simple, effective means of describing a product that is easily understood by both buyers and sellers. By identifying separate and distinct segments of a commodity, grades enable buyers to obtain that particular portion of the entire range of a commodity that meets their individual needs. At the same time, grades are important in transmitting information to cattlemen to help ensure informed decisions are made. For example, the market preference for a particular grade of beef is communicated to cattle producers so they can adjust their production accordingly.

When beef is voluntarily graded, the official grade consists of a quality grade and/or a yield grade. The quality grades are intended to identify differences in the palatability or eating satisfaction of cooked beef principally through the characteristics of marbling and maturity. The principal official USDA quality grades for young (maturity groups ''A'' and ''B'') cattle and carcasses are Prime, Choice, Select, and Standard.

USDA recognizes that the beef standards must be relevant to be of greatest value to stakeholders. Recommendations for changes in the standards may be initiated by USDA or by interested parties. The beef yield grade standard and equation was developed 50 years ago, and the cattle industry has undergone considerable change during those years. At that time, carcasses weighed in the 500 to 600 pound weight range. Today, carcasses average weight is in the 800 to 900 pound range, a 50 percent increase. These carcasses are clearly beyond the scope of USDA's current yield grade equation. This is illustrated by research[1] that has shown the application of the USDA's yield grade equation introduces a ribeye area bias, thereby skewing carcass values. It is imperative that the current yield grade standard and associated metrics be applicable to today's carcass population.

Significant changes (such as feeding regimes—grass fed versus grain fed, instrument grading, management, and export requirements) have taken place in the beef industry since the current grade standards were adopted. Research[2] revealed physiological maturity and its relation to chronological age, as estimated by dentition, results in a gender-dependent maturity misclassification. Further, carcasses from fed cattle under 30 months of age resulted in equivalent tenderness and trained taste panel assessments between ''A'' and ''B'' maturity groups.[3] Gender bias in maturity misclassification of carcasses from cattle under 30 months results in decreased carcass value even though tenderness and expert taste panel outcomes are the same. Grades of beef carcasses are intended to be related both in value and with consumer acceptance. Collectively, the above discussion indicates that the current standards may

[1] Lawrence *et al.,* 2008, Journal of Animal Science 86:1434

[2] Lawrence *et al.,* 2001, Journal of Animal Science 79:1683

[3] Acheson *et al.,* 2014, Journal of Animal Science 92:1792

be improved by reexamining beef carcass yield grade as well as the methodology for maturity assessment.

AMS is soliciting comments from stakeholders about whether changes in the beef carcass yield grade standards and the methodology for maturity assessment should be made, and if so, what specific changes should be made. If, after analyzing the comments, AMS determines that changes are warranted, a notice will be published in the **Federal Register** proposing specific changes. Interested parties will have an opportunity to comment prior to a final decision adopting any changes.

AMS is also soliciting comments on a review of the Department's beef instrument-grading program that was conducted by the American Meat Science Association in response to a USDA Office of Inspector General Report No. 50601–0002–31, issued July 2013. The beef grading instrument uses elements of the United States Standards for Grades of Carcass Beef. The report and review are available at *http://www.ams.usda.gov/PublicationsInstrumentGradingSystems*.

Dated: August 11, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–19309 Filed 8–14–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0018]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene (CCFH)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 23, 2014. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 46th Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission (Codex), in Lima, Peru, November 17–21, 2014. The Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 46th Session of CCFH and to address items on the agenda.

DATES: The public meeting is scheduled for October 23, 2014, from 1:00–4:00 p.m.

ADDRESSES: The public meeting will take place at the Jamie L. Whitten Building, United States Department of Agriculture (USDA), 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 46th Session of the CCFH will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/*.

Jenny Scott, U.S. Delegate to the 46th Session of the CCFH, invites U.S. interested parties to submit their comments electronically to the following email address *Jenny.Scott@fda.hhs.gov*.

Call In Number:

If you wish to participate in the public meeting for the 46th Session of the CCFH by conference call, please use the call in number listed below.

Call in Number: 1–888–844–9904.

The participant code will be listed on the following link closer to the meeting date. *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

For Further Information About the 46th Session of CCFH Contact: Jenny Scott, Senior Advisor, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, HFS–300, Room 3B–014, College Park, MD 20740–3835, Phone: (240) 402–2166, Fax: (202) 436–2632, Email: *Jenny.Scott@fda.hhs.gov*

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Ave SW., Room 4861, Washington, DC, 20250, Phone: (202) 690–4719, Fax: (202) 720–3157, Email: *Barbara.McNiff@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCFH is responsible for:

(a) Drafting basic provisions on food hygiene applicable to all food;

(b) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex commodity standards;

(c) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex codes of practice unless, in specific cases, the Commission has decided otherwise;

(d) Drafting provisions on hygiene applicable to specific food items or food groups, whether coming within the terms of reference of a Codex commodity committee or not;

(e) Considering specific hygiene problems assigned to it by the Commission;

(f) Suggesting and prioritizing areas where there is a need for microbiological risk assessment at the international level and developing questions to be addressed by the risk assessors; and

(g) Considering microbiological risk management matters in relation to food hygiene, including food irradiation, and in relation to the risk assessment of FAO/WHO.

The CCFH is hosted by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 46th Session of the CCFH will be discussed during the public meeting:

- Draft Code of Hygienic Practice for Low-Moisture Foods
- Draft Guidelines for Control of Specific Zoonotic Parasites in Meat: Trichinella spp.
- Proposed Draft Guidelines for the Control of Non typhoidal Salmonella spp. In Beef and Pork Meat
- Proposed Draft Guidelines on the Application of General Principles of Food Hygiene to the Control of Foodborne Parasites.
- Proposed Draft Annex on statistical and mathematical considerations to the Principles and Guidelines for the Establishment and Application of Microbiological criteria Related to Foods
- Discussion paper on the need to revise the Code of Hygienic Practice for Fresh Fruits and Vegetables
- Proposals for new work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Committee meeting. Members of

the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the October 23, 2014, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 46th Session of the CCFH, Jenny Scott (see **ADDRESSES**). Written comments should state that they relate to activities of the 46th Session of the CCFH.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/fsis-notices.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which provides information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the FSIS Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on August 12, 2014.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–19448 Filed 8–14–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0008]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS) is sponsoring a public meeting on September 25, 2014. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 21st Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) of the Codex Alimentarius Commission (Codex), taking place in Australia, October 13–17, 2014. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 21st Session of the CCFICS and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, September 25, 2014 from 1:00–4:00 p.m.

ADDRESSES: The public meeting will take place at the Jamie L. Whitten Building, United States Department of Agriculture (USDA), 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 21st Session of the CCFICS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en.*

Mary Stanley, U.S. Delegate to the 21st Session of the CCFICS invites U.S. interested parties to submit their comments electronically to the following email address *Mary.Stanley@fsis.usda.gov.*

Call-In Number: If you wish to participate in the public meeting for the 21st Session of CCFICS by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

For Further Information About the 21st Session of the CCFICS Contact: Mary Stanley, Director, International Relations and Strategic Planning Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2925, South Building, 1400 Independence Avenue SW., Washington, DC 20250; Phone: (202) 720–0287, Fax: (202) 720–4929, Email: *Mary.Stanley@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250; Phone: (202) 690–4042, Fax: (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFICS Committee is responsible for:

(a) Developing principles and guidelines for food import and export inspection and certification systems with a view to harmonizing methods and procedures which protect the health of consumers, ensure fair trading practices, and facilitate international trade in foodstuffs;

(b) Developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance where necessary that

foodstuffs comply with requirements, especially statutory health requirements;

(c) Developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform with requirements and to promote the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries;

(d) Developing guidelines and criteria with respect to format, declarations, and language of such official certificates as countries may require with a view towards international harmonization;

(e) Making recommendations for information exchange in relation to food import/export control;

(f) Consulting as necessary with other international groups working on matters related to food inspection and certification systems; and

(g) Considering other matters assigned to it by Codex in relation to food inspection and certification systems.

The Committee is hosted by Australia.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 21st Session of CCFICS will be discussed during the public meeting:

- Discussion paper on Principles and Guidelines for the Elaboration and Management of Questionnaires Directed at Exporting Countries.
- Discussion paper on Principles and Guidelines for Monitoring Regulatory Performance of National Food Control Systems.
- Discussion paper on the revision of the Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations.
- Draft amendments to Guidelines for the Exchange of Information between Countries on Rejections of Imported Food.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the September 25, 2014, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Stanley, U.S. Delegate for the 21st Session of CCFICS (see **ADDRESSES**). Written comments should state that they relate to activities of the 21st Session of the CCFICS.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which provides information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other matters that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, onAugust 12, 2014.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–19410 Filed 8–14–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

[EIS No. 20140183]

Extension of Comment Period on the Draft Environmental Impact Statement Tonto National Forest Motorized Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; Extension of comment period.

SUMMARY: The Forest Service published a notice of availability in the **Federal Register** on July 3, 2014 initiating a 45-day comment period on the Draft Environmental Impact Statement for the Toto National Forest Motorized Travel Management plan. The closing date for that 45-day comment period is August 18, 2014. The Agency is extending the comment period; therefore, the comment period has been extended to September 17, 2014.

DATES: Comments must be received by September 17, 2014.

ADDRESSES: Send comments electronically by following the instructions at *http://data.ecosystem-management.org/nepaweb/fs-usda-pop.php?project=28967.* Comments may also be submitted by electronic mail to *comments-southwestern-TMRTonto@fs.fed.*us, by mail to Neil Bosworth, Forest Supervisor, ATTN: Travel Management, 2324 E. McDowell Road, Phoenix, AZ 85006, or by or via facsimile (602) 225–5302. This project is an activity implementing a land management plan and subject to the objection process described in 36 CFR part 218 Subparts A and B. It is the responsibility of persons providing comments to submit them by the close of the comment period. Only those who submit timely and specific written comments will have eligibility to file and objection under § 218.8. Individuals and originations wishing to be eligible to object must meet the information requirements in § 218.25(a)(3). Names and contact information submitted with comments will become part of the public record and may be released under the Freedom of Information Act.

When submitting comments, please keep them specific to this project only. Comments which are not specific to the project and project area will be deemed outside the scope of the analysis and will not be considered. If you provide recommendations for changes to routes or areas, please include route numbers or location descriptions, as well as the reasons for your recommendations. If you are including references, citations,

or additional information to be considered for this project, please specify exactly how the material relates to the project. Also, indicate exactly what part of the material you would like us to consider (such as page or figure number).

FOR FURTHER INFORMATION CONTACT: Anne Thomas, Tonto National Forest NEPA Coordinator, 2324 E. McDowell Rd, Phoenix, AZ 85006, (602) 225–5213. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: For additional information on this project, please visit: *http://www.fs.usda.gov/detail/tonto/landmanagement/planning/?cid=fsbdev3_018761.*

Dated: August 7, 2014.

Donna J. Sherwood,

Acting Forest Supervisor, Tonto National Forest, Forest Service.

[FR Doc. 2014–19105 Filed 8–14–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Georgia and State of Montana Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of the Georgia Department of Agriculture (Georgia) and the Montana Department of Agriculture (Montana) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* July 1, 2014.

ADDRESSES: Eric J. Jabs, Deputy Director, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the December 26, 2013 **Federal Register** (78 FR 78328), GIPSA requested applications for designation to provide official services in the geographic areas currently served by agencies of the States of Georgia and Montana. Applications were due by January 27, 2014.

Georgia and Montana were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Georgia and Montana are qualified to provide official services in the geographic area specified in the **Federal Register** on December 26, 2013. This designation action to provide official services in these specified areas is effective July 1, 2014 to June 30, 2017.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Georgia	Tifton, GA (229) 386–3129	7/1/2014	6/30/2017
Montana	Great Falls, MT (406) 452–9561	7/1/2014	6/30/2017

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2014–19372 Filed 8–14–14; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[08/06/2014 through 08/11/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Longmont Machining of North Dakota, Inc.	3115 30th Avenue S, Fargo, ND 58103.	8/11/2014	The firm manufactures metal and plastic parts for various industries.
S & B Metal Products Inc	2060 Case Parkway North, Twinsburg, OH 44087.	8/8/2014	The firm manufactures parts and structures including sheet metals parts and steel elements.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[08/06/2014 through 08/11/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
West Linn Paper	4800 Mill St, West Linn, OR 97068.	8/8/2014	The firm manufactures coated free paper.
Don Byram Art, LLC	249 Pottery Factory Drive, Commerce, GA 30529.	8/9/2014	The firm manufactures frames, framed art and pictures.
Wolf & Sons Designs Inc	314 Main St, Smithville TX 78957.	8/11/2014	The firm manufactures women's clothing and sewn apparel.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: August 11, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–19347 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2014]

Foreign-Trade Zone 106—Oklahoma City, Oklahoma, Application for Expansion (New Magnet Site) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port Authority of Greater Oklahoma City, grantee of Foreign-Trade Zone 106, requesting authority to expand its zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)) to include a new magnet site in Shawnee, Oklahoma. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400). It was formally docketed on August 12, 2014.

FTZ 106 was established by the Board on September 13, 1984 (Board Order 271, 49 FR 36133, 9/21/84), and expanded on December 7, 1989 (Board Order 455, 54 FR 51441, 12/15/89), on February 10, 2000 (Board Order 1078, 65 FR 8337–8338, 2/18/00), on September 28, 2007 (Board Order 1529, 72 FR 56722–56723, 10/4/07), and on June 26, 2009 (Board Order 1628, 74 FR 32892, 7/9/09). FTZ 106 was reorganized and expanded under the ASF on February 29, 2012 (Board Order 1816, 77 FR 15357, 3/15/12). The zone currently has a service area that includes Blaine, Caddo, Canadian, Cleveland, Comanche, Custer, Garfield, Garvin, Grady, Kay, Kingfisher, Lincoln, Logan, McClain, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, Oklahoma.

The zone consists of the following eight sites (five magnet and three usage-driven): *Site 1* (1,091 acres)—located within the Will Rogers World Airport complex and at the Will Rogers World Airport NE in Oklahoma City; *Site 2* (6 acres, sunset 2/28/2015)—Biagi Bros. Warehouse, 5002 SW 36th, Oklahoma City; *Site 12* (26 acres, sunset 2/28/2017)—ICON Center Industrial Park, 300 Arlington, Ada; *Site 13* (308 acres, sunset 2/28/2017)—within the 401-acre Guthrie/Edmond Regional Airport, 520 Airport Road, Guthrie; *Site 14* (19 acres, sunset 2/28/2015)—Industrial Gasket, Inc. dba International Group, facility, 720 South Sara Road, Mustang; *Site 15* (67.688 acres, sunset 2/28/2017)—Cimarron Industrial Park at the Enid Woodring Regional Airport, 1026 S. 66th, Enid; *Site 16* (63.434 acres, sunset 2/28/2017)—Shawnee Regional Airport industrial park, 2202 Airport Road, Shawnee; and, *Site 17* (59.33 acres, sunset 8/31/2015)—VF Jeanswear Limited Partnership, 1400 Wrangler Boulevard, Seminole.

The applicant is now requesting authority to expand its zone to include an additional magnet site: *Proposed Site 18* (400 acres)—The Iron Horse Industrial Park, 43350 Hardesty Road, Shawnee. The proposed new site is adjacent to the Oklahoma City Customs and Border Protection port of entry.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 14, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 29, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: August 12, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–19419 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring From the People's Republic of China

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') preliminarily determines that Linyi Youyou Wood

Co., Ltd. (''Youyou'') is the successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Industry Limited Company of Shanghai (''Lizhong'') in the antidumping duty order on multilayered wood flooring from the People's Republic of China (''PRC'') and, as such, is entitled to Lizhong's cash deposit rate with respect to entries of subject merchandise. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, 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) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 2014, Lizhong requested that the Department initiate a changed circumstances review to confirm that Youyou is the successor-in-interest to Lizhong for purposes of determining antidumping duty liabilities.

Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[1] Imports of the subject merchandise are provided for under the following subheadings of the HTSUS: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.[2]

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''), and the Department's regulations (19 CFR 351.216 and 351.221(c)(3)), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Lizhong claiming that Youyou is its successor-in-interest demonstrates changed circumstances sufficient to warrant a review.[3] When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a changed circumstances review concurrently.[4] In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted, and are combining the notice of initiation and the notice of preliminary results.

In accordance with the above-referenced regulations, the Department is initiating a changed circumstances review to determine whether Youyou is the successor-in-interest to Lizhong. In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base.[5] While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be the successor to another company if its resulting operation is essentially the same as that of its predecessor.[6] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.[7]

Preliminary Determination

In its June 20, 2014 submission, Lizhong provided documentation demonstrating that Youyou is its successor-in-interest in that no major changes occurred with respect to Lizhong's management, production process, customer base, or suppliers.[8]

According to the information provided, Youyou is owned, managed and operated by the same ownership and management teams as Lizhong.[9] Lizhong also provided documentation that there had been no material change in suppliers of inputs or services related to the production, sale and distribution of the subject merchandise.[10] Youyou, which had previously supplied materials to Lizhong, has taken up the production of the subject merchandise and continued to utilize its other suppliers.[11]

Regarding its production of the subject merchandise, Lizhong stated that the production capacity, process and equipment of Youyou are identical

[1] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement & Compliance, dated concurrently with this notice, regarding ''Preliminary Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,'' issued concurrently with this notice for a complete description of the Scope of the Order.

[2] On August 28, 2013, in consultation with CBP, the Department added the following HTSUS classification to the AD/CVD module for wood flooring: 9801.00.2500. *See* Letter to the File from Lilit Astvatsatrian, Case Analyst, Enforcement and Compliance, Office IV, regarding ''Multilayered Wood Flooring from the PRC, Modification of the Case Reference File in ACE,'' (November 18, 2013).

[3] *See* 19 CFR 351.216(d).

[4] *See* 19 CFR 351.221(c)(3)(ii).

[5] *See, e.g., Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan,* 69 FR 61796, 61797 (October 21, 2004).

[6] *Id.*

[7] *See Notice of Final Results of Changed Circumstances Review: Polychloroprene Rubber from Japan,* 69 FR 67890 (November 22, 2004); *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstance Review,* 70 FR 17063 (April 4, 2005).

[8] *See* June 20, 2014 letter from Lizhong re: Multilayered Wood Flooring from the People's Republic of China: Request for Changed Circumstances Review (''Lizhong CCR Request'').

[9] *See* Lizhong CCR Request at page 4 and attachment 1.

[10] *See* Lizhong CCR Request at page 5 and attachment 4.

[11] *See id.*

to that of Lizhong.[12] Due to the PRC Government-directed ''Removal and Relocation'' project, Lizhong was obligated to physically transfer operations away from its production location to Youyou's facility.[13]

Finally, Lizhong has indicated that there has been no change with its U.S. customer base or its sale of the subject merchandise.[14] Since Lizhong was required to move physical facilities, Youyou stated that it will continue to sell to all of these U.S. customers the same subject merchandise using its own taxpayer ID number.[15]

On August 1, 2014, the Coalition for American Hardwood Parity, petitioner in the underlying investigation, submitted a letter stating that it does not object to Lizhong's request that the Department grant Youyou successor-in-interest status. As a result, because all parties to the proceeding agree to the outcome of the review, the Department concluded that expedited action is warranted in this review.[16] With the information provided, we preliminarily find Youyou as the successor-in-interest to Lizhong and, as such, that it is entitled to Lizhong's cash-deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by Youyou the antidumping duty cash-deposit rate applicable to Lizhong effective the date of publication of the final results.

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice.[17] Parties will be notified of the time and date of any hearing, if requested. Interested parties may submit case briefs and/or written comments not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this changed circumstances review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent with 19 CFR 351.216(e), we intend to issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: August 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–19412 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* Lizhong CCR Request at page 5 and attachment 3.

[13] *See* Lizhong CCR Request at page 5 and attachment 3.

[14] *See* Lizhong CCR Request at page 6 and attachments 5 and 6.

[15] *See* Lizhong CCR Request at page 5 and attachment 3.

[16] *See* 19 CFR 351.216(e) and 351.221(c)(3)(ii).

[17] *See* 19 CFR 351.303 for general filing requirements.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose From Finland; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Ashland Specialty Ingredients, a division of Hercules Inc., (Petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Finland. The period of review (POR) is July 1, 2012, through June 30, 2013. The review covers one respondent, CP Kelco Oy (CP Kelco). We preliminarily find that sales of the subject merchandise by CP Kelco have not been made at prices below normal value (NV) during the POR. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Steve Bezirganian, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–1131, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. For a full description of the scope of the order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement & Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Purified Carboxymethylcellulose from Finland'' (Preliminary Decision Memorandum), which is dated concurrently with this notice, and is hereby incorporated by reference.[1]

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price (EP) and constructed export price (CEP) are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary 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 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 Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following

[1] A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix I of this notice.

dumping margin for the period July 1, 2012, through June 30, 2013.

Exporter/Manufacturer	*Margin*
CP Kelco Oy	0.00 percent

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[2] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[3] 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.[4] Case and rebuttal briefs should be filed using IA Access.[5] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time on the date the document is due.

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, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Departments electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, within 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If CP Kelco's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If CP Kelco's weighted-average dumping margin is zero or *de minimis* in the final results of review, or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to dumping margins.[7] We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for CP Kelco Oy will be the rate established in the final results of this administrative review except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.65 percent, the all-others rate established in the less-than-fair-value investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 8, 2014.

Paul Piquado,

Assistant Secretary, Enforcement & Compliance.

Appendix I— List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of The Order
Methodology
  Fair Value Comparisons
  Product Comparisons
  Determination of Comparison Method
  Results of Differential Pricing Analysis
  Date of Sale
  U.S. Price
  Export Price
  Constructed Export Price
  Sales of Merchandise Further Manufactured in the United States
  U.S. Sample Sales
  Normal Value
  Home Market Viability as Comparison Market
  Calculation of NV Based On Comparison Market Prices
  HM Sample Sales
  Cost of Production Analysis
  Level of Trade Analysis/CEP Offset
  Calculation of Normal Value Based on Constructed Value
  Currency Conversion
Conclusion

[FR Doc. 2014–19399 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.309(c)(2) and (d)(2).

[5] *See* 19 CFR 351.303.

[6] *See* 19 CFR 351.310(c).

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[8] *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, C–475–819]

Certain Pasta From Italy: Initiation and Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews, and Intent To Revoke Orders, In Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), Grandi Pastai Italiani, Inc. and Grandi Pastai Italiani S.pA. (together, GPI) filed a request for an expedited changed circumstances review of the antidumping duty (AD) and countervailing duty (CVD) orders on certain pasta from Italy [1] to revoke the *Orders* with respect to certain cheese- and/or vegetable-filled (stuffed) ravioli and tortellini pasta (stuffed ravioli and tortellini pasta). The Department of Commerce (the Department) is initiating a changed circumstances review to be conducted on an expedited basis and issuing a notice of preliminary intent to revoke, in part, the *Orders.* Interested parties are invited to comment on these preliminary results.

DATES: *Effective Dates:* July 1, 2012 for AD order A–475–818 and January 1, 2012 for CVD order C–475–819

FOR FURTHER INFORMATION CONTACT: Chris Siepmann at (202) 482–7958; AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On July 24, 1996, the Department published in the **Federal Register** the *Orders* on certain pasta from Italy. On May 16, 2014, in accordance with sections 751(b) and 751(d)(1) of the Act, 19 CFR 351.216(b), and 19 CFR 351.222(g)(1), GPI, an importer of subject merchandise, requested revocation, in part, of the *Orders* with respect to its Italian stuffed ravioli and tortellini pasta, filled with cheese and/or vegetables, as part of a changed circumstances review. GPI requested that the Department conduct the changed circumstances review on an expedited basis pursuant to 19 CFR 351.221(c)(3)(ii). On July 15, 2014, the Department extended the deadline for initiation of this review request by 30 days until August 13, 2014.

Scope of the Orders

Imports covered by these *Orders* are shipments of certain non-egg pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of these *Orders* are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificzione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazion Italiana per l'Agricoltra Biologica, by Ambientale.[2] Effective July 1, 2008, gluten-free pasta is also excluded from the AD order.[3] Effective January 1, 2009, gluten-free pasta is also excluded from the scope of the CVD order.[4]

The merchandise subject to these *Orders* is currently classifiable under items 1901.90.9095 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the description of the merchandise subject to the *Orders* is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the *Orders.*[5]

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the *Orders.*[6]

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the *Orders.* On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the *Orders.*[7]

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the *Orders* pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b).[8] On September 19, 2003, we published an affirmative finding in the anti-circumvention inquiry.[9]

(5) On July 18, 2013, the Department issued a scope ruling finding that Valdigrano di Flavio Pagani S.r.L. product which is made from a dough that contains 2.5 percent egg white, by weight, is within the scope of the *Orders.*[10]

---

[1] *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 38544 (July 24, 1996) and *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996) (collectively, the *Orders).*

[2] *See* Memorandum from Yasmin Nair to Susan Kuhbach, entitled ''Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy'' (October 10, 2012), which is on file in the Department's Central Records Unit (''CRU'') in Room 7046 of the main Department building.

[3] *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation,* in Part, 74 FR 41120 (August 14, 2009).

[4] *See Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011) (*Pasta from Italy CVD CCR*).

[5] *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

[6] *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

[7] *See* Memorandum from John Brinkman to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

[8] *See Certain Pasta From Italy: Notice of Initiation of Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000).

[9] *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003).

[10] *See* Memorandum from Joseph Shuler to Christian Marsh, dated July 18, 2013, which is on file in the CRU.

Initiation and Preliminary Results of Changed Circumstances Review, and Consideration of Revocation of the Order In Part

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

On May 16, 2014, GPI requested the Department conduct the changed circumstances review on an expedited basis. On the same day, Petitioners [11] filed a letter in support of GPI's changed circumstances review request. Petitioners stated that, as producers accounting for substantially all of the production of the domestic like product in support of the *Orders,* they have no interest in including ravioli and tortellini filled with cheese and/or vegetables in the scope of the *Orders.*[12]

Therefore, at the request of GPI and in accordance with sections 751(b)(1) and 751(d)(1) of the Act, 19 CFR 351.216, 19 CFR 351.222(g)(1), and 19 CFR 351.221(c)(3)(ii), we are initiating this changed circumstances review of ravioli and tortellini filled with cheese and/or vegetables from Italy to determine whether partial revocation of the *Orders* is warranted with respect to this product. In addition, we determine that expedited action is warranted. In accordance with 19 CFR 351.222(g)(1), we find that Petitioners' affirmative statements of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review pursuant to 19 CFR 351.221(c)(3)(ii) stems from the domestic industry's lack of interest in applying the *Orders* to ravioli and tortellini filled with cheese and/or vegetables.

Based on the expression of no interest by Petitioners and absent any objections by other domestic interested parties, we preliminarily determine that substantially all of the domestic producers have no interest in the continued application of the *Orders* on pasta from Italy to the merchandise that is subject to GPI's request. Therefore, we are notifying the public of our intent to revoke, in part, the *Orders* as they relate to imports of ravioli and tortellini filled with cheese and/or vegetables from Italy. This partial revocation would be retroactively applied to entries of ravioli and tortellini filled with cheese and/or vegetables, entered or withdrawn from warehouse, for consumption, on or after July 1, 2012 for the antidumping duty order and January 1, 2012 for the countervailing duty order, which are the day after the last day of the most recently completed administrative reviews under each order.[13] We intend to modify the scope of the AD order to read as follows:

Imports covered by these orders are shipments of certain non-egg pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of these orders are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificzione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazion Italiana per l'Agricoltra Biologica, by Ambientale.[14] Effective July 1, 2008, gluten-free pasta is also excluded from the AD order.[15] Effective January 1, 2009, gluten-free pasta is also excluded from the scope of the CVD order.[16] *Effective July 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the AD order. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the CVD order.*

The merchandise subject to these orders is currently classifiable under items 1901.90.9095 and 1902.19.20 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the description of the merchandise subject to the orders is dispositive.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results. Consistent with 19 CFR 351.309, parties who submit written comments or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 10 days of the date of publication of this notice. Further, any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first business day thereafter. All written comments and/or hearing requests must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[17] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time of the deadlines set forth in this notice.

We will issue our final results of this changed circumstances review as soon as practicable following the above comment period, but not later than 270 days after the date on which we initiated the changed circumstances review or within 45 days if all parties agree to our preliminary results, in accordance with 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective dates of the notice of revocation and to release any cash deposit or bond. The current requirement for a cash deposit of estimated AD and CVD duties on all subject merchandise will continue

[11] Petitioners in this proceeding include A. Zerega's Sons, Inc., American Italian Pasta Company, Dakota Growers Pasta Company, New World Pasta Company, Philadelphia Macaroni Company, and ST Specialty Foods.

[12] *See* Letter from Petitioners, ''Changed Circumstances Review Request—Certain Pasta from Italy,'' dated May 16, 2014. In its administrative practice, the Department has interpreted ''substantially all'' to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Pasta from Italy CVD CCR,* 76 FR at 27635.

[13] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009) (retroactively revoking an order, in part, to unliquidated entries not subject to a final determination by the Department).

[14] *See* Memorandum from Yasmin Nair to Susan Kuhbach, entitled ''Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy'' (October 10, 2012), which is on file in the Department's Central Records Unit (''CRU'') in Room 7046 of the main Department building

[15] *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation,* in Part, 74 FR 41120 (August 14, 2009).

[16] *See Pasta from Italy CVD CCR.*

[17] *See, generally,* 19 CFR 351.303.

unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221(b)(1), (4), and 351.222(g).

Dated: August 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–19401 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 4, 2014. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 14–017. Applicant: Chehalis School District, 310 SW 16th Street, Chehalis, WA 98532. Instrument: Electron Microscope. Manufacturer: Tescan, S.R.O., Czech Republic. Intended Use: The instrument is used to study the properties of materials at the nanoscale level. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 10, 2014.

Docket Number: 14–018. Applicant: University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. Instrument: Electron Microscope. Manufacturer: Brno, Czech Republic. Intended Use: The instrument is used to investigate the cellular ultrastructure at nanometer resolutions. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 13, 2014.

Dated: August 11, 2014.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2014–19406 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Pacific Halibut and Sablefish Fisheries: Individual Fishing Quotas (IFQs)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before October 14, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7228 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) established the Individual Fishing Quotas (IFQs) Program to improve the long-term productivity of the sablefish and Pacific halibut fisheries by further promoting the conservation and management objectives of the Magnuson-Stevens Conservation Act, 16 U.S.C. 1801 *et seq.,* as amended in 2006 (Magnuson-Stevens Act) (with respect to sablefish) and the Northern Pacific Halibut Act of 1982 (with respect to Pacific halibut) while retaining the character and distribution of the fishing fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps that protect small producers, part-time participants, and entry-level participants that otherwise could be adversely affected by excessive consolidation.

The IFQ Program also includes other restrictions to prevent the halibut and sablefish fisheries from domination by large boats or by any particular vessel class. NMFS designed the requirements to maintain a predominantly owner-operated fishery, which was a key characteristic of the halibut and sablefish fisheries prior to the implementation of the IFQ Program. The IFQ Program provides each fisherman an IFQ that can be used any time during the open season to allow each fisherman to set his/her own pace and fishing effort.

Under the IFQ Program, quota share (QS) represents a harvesting privilege for a person. Annually, NMFS issues IFQ to QS holders to harvest specified poundage. The specific amount of IFQ held by a person is determined by the number of QS units held, the total number of QS units issued in a specific regulatory area, and the total pounds of sablefish or halibut allocated for the IFQ fisheries in a particular year. Fishermen may harvest the IFQ over the entire fishing season, which extends approximately from March through November 15.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0272.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 1,686.

Estimated Time Per Response: Application for Eligibility to receive QS/IFQ (TEC) and QS holder form, Application for Transfer of QS/IFQ to or from a CQE, Application for Transfer of QS/IFQ (includes sweep-up); Application for Military Transfer, Application for Emergency Medical Transfer; 2 hours each; Identification of Ownership Interest, Application for

IFQ/CDQ Hired Master Permit, Application for Registered Buyer permit and QS/IFQ Designated Beneficiary Form, Application for replacement of certificates, permits, or licenses, 30 minutes each; 200 hours for Application for a Non-profit to be Designated as a Community Quota Entity (CQE); 4 hours for Letter of Appeal; 18 minutes for Registered Buyer landing report; 6 minutes for IFQ Administrative Waiver; 12 minutes each for Prior Notice of Landing (PNOL); 15 minutes for IFQ Departure Report and Transshipment Authorization; and 6 minutes for Dockside Sales Receipt.

Estimated Total Annual Burden Hours: 10,354.

Estimated Total Annual Cost to Public: $13,557 in recordkeeping/reporting costs.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 11, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–19316 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; National Oceanographic Data Center Send2NODC Web Application

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before October 14, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Donald W. Collins, (301) 713–3272 x154 or *Donald.Collins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for reinstatement with change of a previously approved information collection.

When creating a Request to Archive oceanographic data or information at the United States (U.S.) National Oceanographic Data Center (NODC), well-organized and complete metadata describing those data are needed for long term understanding and use of those data. The Send2NODC *web application* provides a web-based form for easily collecting required and optional descriptive metadata to describe oceanographic data in a way that supports Executive Order 12906 and structures those metadata to conform to the internationally used ISO 19115–2 Geospatial Metadata standard. Descriptive metadata informs the suitability of data for use by future data users and should provide critical context about how data were collected, what techniques and measurements were made, and data quality characterizations. Information about the data provider or other individuals is only used by NODC to contact the data provider with questions about submitted data, about the status of the data in the archival process, and to provide appropriate scientific recognition and attribution for submitted data. Send2NODC will be used by ocean scientists, principal investigators and their data managers.

II. Method of Collection

Respondents use the browser-based Send2NODC web application to provide information that was previously collected on a paper or electronic form. Using electronic File Transfer Protocol (FTP) to transfer digital files from the Data Provider to NODC are integrated into the Send2NODC web application, but the respondent may opt to send digital files to NODC using other media, such as on CD– or DVD–ROM discs or other media.

III. Data

OMB Control Number: 0648–0024.

Form Number: NOAA 24–13.

Type of Review: Regular submission (reinstatement with change).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Response: One hour.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 11, 2014

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–19317 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD421

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2014. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 9:00 a.m. to 5:30 p.m. on Wednesday, September 10; and from 8:00 a.m. to 12:30 p.m. on Thursday, September 11, 2014.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting presentations will also be available via WebEx webinar/conference call. On Wednesday, September 10, 2014 the conference call information is phone number 1–877–512–3581;

Participant Code: 888454; and the webinar event address is: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=996362177&t=a;* event password; NOAA.

On Thursday, September 11, 2014 the conference call information is phone number 1–877–512–3581; Participant Code: 888454; and the webinar event address is: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=995881214&t=a* ; event password: NOAA.

Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Jenni Wallace or Margo Schulze-Haugen at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, and 8 to the Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, and April 2014); among other things.

The intent of this meeting is to consider alternatives for the conservation and management of all Atlantic tunas, swordfish, billfish, and shark fisheries. We anticipate discussing comments on the Predraft for Amendment 6 to the 2006 Consolidated HMS Fishery Management Plan (FMP) on the future of the shark fishery, providing updates on Amendment 5b on dusky shark management, discussing the proposed rule for Amendment 9 on smoothhound shark management, and reviewing the Final Environmental Impact Statement for Final Amendment 7 on bluefin tuna management measures. The meeting will also include progress updates on the National Recreational Policy, implementation of 2013 ICCAT recommendations, the Atlantic HMS Management-Based Research Priorities document, the HMS compendium/management history, and electronic monitoring and electronic reporting opportunities for Atlantic HMS fisheries.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: *http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/ap_meetings.html.*

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jenni Wallace at (301) 427–8503 at least 7 days prior to the meeting.

Dated: August 11, 2014

Emily H. Menashes,

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

[FR Doc. 2014–19345 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for National Marine Sanctuary Advisory Councils

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: ONMS is seeking applications for vacant seats for 7 of its 13 national marine sanctuary advisory councils and for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils). Vacant seats, including positions (i.e., primary member and alternate), for each of the advisory councils are listed in this notice under Supplementary Information. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lake resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members or alternates should expect to serve two- or three year terms, pursuant to the charter of the specific national marine sanctuary advisory council or the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council.

DATES: Applications are due by September 30, 2014.

ADDRESSES: Application kits are specific to each advisory council. As such, application kits must be obtained from and returned to the council-specific addresses noted below.

- Cordell Bank National Marine Sanctuary Advisory Council: Lilli Ferguson, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950; (415) 663–0314 extension 107; email *Lilli.Ferguson@noaa.gov;* or download application from *http://cordellbank.noaa.gov.*
- Florida Keys National Marine Sanctuary Advisory Council: Beth Dieveney, Florida Keys National Marine

Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 809–4700 extension 228; email *Beth.Dieveney@noaa.gov;* or download application from *http://floridakeys.noaa.gov/sac/welcome.html?s=sac.*

• Flower Garden Banks National Marine Sanctuary Advisory Council: G.P. Schmahl, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216, Galveston, TX 77551; (409) 621–5151 extension 102; email *George.Schmahl@noaa.gov;* or download application from *http://flowergarden.noaa.gov/advisorycouncil/councilnews.html.*

• Gray's Reef National Marine Sanctuary Advisory Council: Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; (912) 598-2381; email *Becky.Shortland@noaa.gov;* or download application from *http://graysreef.noaa.gov/management/sac/welcome.html.*

• Monitor National Marine Sanctuary Advisory Council: Shannon Ricles, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; (757) 591–7328; email *Shannon.Ricles@noaa.gov;* or download application from *http://monitor.noaa.gov.*

• National Marine Sanctuary of American Samoa Advisory Council: Joseph Paulin, National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, Utulei, American Samoa; (684) 633–6500; email *Joseph.Paulin@noaa.gov;* or download application from *http://americansamoa.noaa.gov.*

• Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Hoku Johnson, NOAA Inouye Regional Center, NOS/ONMS/PMNM, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818; (808) 725–5800; email *Hoku.Johnson@noaa.gov;* or download application from *http://www.papahanaumokuakea.gov/council/.*

• Stellwagen Bank National Marine Sanctuary: Elizabeth Stokes, NOS/ONMS/SBNMS, 175 Edward Foster Road, Scituate, MA 02066; (781) 545–8026 extension 201; email *Elizabeth.Stokes@noaa.gov;* or download application from *http://stellwagen.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: For further information on a particular national marine sanctuary advisory council, please contact the individual identified in the Addresses section of this notice.

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Keys, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustains healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. National marine sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries and the Papahanaumokuakea Marine National Monument on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the sanctuary. Additional information on ONMS and its advisory councils can be found at *http://sanctuaries.noaa.gov.* Information related to the purpose, policies and operational requirements for advisory councils can be found in the charter for a particular advisory council (*http://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the National Marine Sanctuary Advisory Council Implementation Handbook (*http://www.sanctuaries.noaa.gov/management/ac/acref.html*).

The following is a list of the vacant seats, including positions (i.e., primary member or alternate), for each of the advisory councils currently seeking applications for members and alternates:

Cordell Bank National Marine Sanctuary Advisory Council: Community-at-Large-Marin (primary member); and Research (primary member).

Florida Keys National Marine Sanctuary Advisory Council: Citizen at Large-Lower Keys (primary member and alternate); Conservation and Environment (primary member and alternate); Diving-Lower Keys (primary member and alternate); Fishing-Charter Flats Fishing Guide (primary member and alternate); South Florida Ecosystem Restoration (primary member and alternate); and Fishing-Commercial-Marine/Tropical (primary member).

Flower Garden Banks National Marine Sanctuary Advisory Council: Diving Operations (two primary members); Recreational Diving (primary member); and Commercial Fishing (primary member).

Gray's Reef National Marine Sanctuary Advisory Council: Citizen-at-large (primary member).

Monitor National Marine Sanctuary Advisory Council: Recreational/Commercial Fishing (two primary members); and Youth (primary member).

National Marine Sanctuary of American Samoa Advisory Council: Community-At-Large, Manu 'a (primary member); Community-At-Large, Aunu 'u (primary member),· Youth Member (primary member).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Native Hawaiian (alternate); and Native Hawaiian Elder (alternate).

Stellwagen Bank National Marine Sanctuary Advisory Council: At-Large (alternate); Conservation (two alternates); Maritime Heritage (primary member and alternate); and Mobile Gear Commercial Fishing (alternate).

Authority: 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: July 21, 2014.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–19235 Filed 8–14–14; 8:45 am]

BILLING CODE 3510–NK–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products previously furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on or Before:* 9/15/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

Computer Accessories

NSN: 6150–00–NIB–0005.
NSN: 6150–00–NIB–0006.
NPA: Wiscraft, Inc., Milwaukee, WI.
Contracting Activity: General Services Administration, New York, NY.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2014–19396 Filed 8–14–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 9/15/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/30/2014 (79 FR 31095–31096); 6/13/2014 (79 FR 33911–33912); and 6/20/2014 (79 FR 35320), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the products and services to the Government.

2. The action will result in authorizing small entities to provide the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Socket Set

NSN: 5120–00–NIB–0111—¼ Drive Shallow, SAE 6 and 12 Point Fasteners, 10 Pieces
NSN: 5120–00–NIB–0112—¼ Drive Deep, SAE 6 and 12 Point Fasteners, 10 Pieces
NSN: 5120–00–NIB–0113—Combination, ¼ Drive Shallow, SAE 6 and 12 Point Fasteners, 14 Pieces
NSN: 5120–00–NIB–0114—⅜ Drive Shallow, SAE 12 Point Fasteners, 11 Pieces
NSN: 5120–00–NIB–0115—⅜ Drive Deep, SAE 12 Point Fasteners, 13 Pieces
NSN: 5120–00–NIB–0116—Combination, ⅜ Shallow, SAE 12 Point Fasteners, 18 Pieces
NSN: 5120–00–NIB–0117—½ Drive Shallow, SAE 6 and 12 Point Fasteners, 13 Pieces
NSN: 5120–00–NIB–0118—½ Drive Deep, SAE 12 Point Fasteners, 13 Pieces
NSN: 5120–00–NIB–0119—Combination, ½ Drive Shallow, SAE 12 Point Fasteners, 17 Pieces
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, Kansas City, MO
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration, Kansas City, MO.

Services

Service Type/Location: Warehouse & Supply Support Service, Space and Naval Warfare Systems Center Atlantic, One Innovation Dr., Bldg. 3147 North Charleston, SC
NPA: Goodwill Services, Inc., Richmond, VA
Contracting Activity: Dept of the Navy, SPAWAR Systems Center Atlantic, North Charleston, SC

Service Type/Location: IT Service Desk Support Service, USDA Forest Service, 101B Sun Avenue NE., Suite 200, Albuquerque, NM
NPA: Peckham Vocational Industries, Inc., Lansing, MI
Contracting Activity: Department of Agriculture Forest Service, WO–AQM IT Support, Albuquerque, NM

Comments: Comments were received from an AbilityOne nonprofit agency (NPA) that provides home-based employment for people with severe disabilities (hereafter ''home-based NPA''). The home-based NPA was among the AbilityOne NPAs considered to provide the IT Service Desk Support service to USDA. However, the central nonprofit agency (CNA) that is required to propose projects, along with qualified and capable NPAs to perform the projects, to the Committee for Procurement List (PL) consideration, did not recommend the home-based NPA to perform the subject service.

The home-based NPA's comments focused on the CNA's procedures for evaluating its NPAs when making recommendations to the Committee of suitable projects for the government to procure from qualified nonprofit agencies. The home-based NPA asserts the CNA's evaluation of its NPA and the subsequent recommendation were flawed since the CNA did not consider which NPA would maximize employment for people with severe disabilities. The home-based NPA also states that the CNA recommendation is not sufficient to support a government contract award decision and the review and recommendation was based on stale information that did not include the fact that the home-based NPA is currently performing these services for USDA. The home-based NPA also stated that it appealed the CNA recommendation through program channels; however, the appeal was not properly evaluated by the CNA and Committee staff. Therefore, the home-based NPA asserts that the recommendation should not be relied upon by the Committee.

The Javits-Wagner-O'Day (JWOD) Act authorized the Committee to establish rules and regulations to administer the AbilityOne Program and directs the Committee to designate CNAs to assist in the program. Committee regulations require the CNAs to evaluate the qualifications and capabilities of the NPAs they represent in the AbilityOne Program. Committee regulations and

policy also establish criteria and procedures that are used when considering products and services for addition to the PL and in determining which of the approximately 600 qualified NPAs will be designated to perform specific projects added to the PL.

In this instance, the CNA recommended that the IT Service Desk Support service be considered for addition to the PL. The CNA also recommended a qualified AbilityOne NPA to perform the service for USDA; however, it was not the home-based NPA. The home-based NPA did not agree with the CNA recommendation and twice appealed the decision through the established AbilityOne Program procedures. The Committee ED conducted remanded the CNA's first selection for recommendation back to SourceAmerica for corrective action. The corrective action required a second review process with new proposal submissions and a new and independent SourceAmerica review team. The second review team results and CNA recommendation was appealed by the home-based NPA. On review of the new NTI appeal the Commission ED concluded that the CNA followed and documented its process as required; therefore, there was no change or corrective action to the CNA recommendation of the NPA to perform the service. The CNA was then able to submit the Call Center PL addition for consideration of the Commission.

The Committee does not subscribe to the commenter's suggestion that products and services added to the PL must be furnished by the AbilityOne nonprofit agency that will maximize employment for people who are blind or severely disabled. Neither the JWOD Act nor the implementing regulations impose that as a requirement determining what nonprofit will provide the PL service. The JWOD Act requires all qualified nonprofit agencies to employ persons who are blind or significantly disabled on an annual basis for not less than 75% of the direct labor hours required to furnish products or services. To be considered suitable, Committee regulations require every AbilityOne product or service to meet the Federal customer's requirement and standards, as well as provide employment potential for people who are significantly disabled. The vision of the AbilityOne Program is to enable each person with a disability to maximize his or her employment potential. None of these guidelines impose a measure of maximizing employment on a project level, which, if not balanced, could lead to inefficiencies or suboptimal solutions that are not in the best interest of the Government.

The home-based NPA's comment that the CNA recommendation is not sufficient to support a government contract award misstates the facts. The Committee determines which products and services are suitable for addition to the PL and designates which NPA will furnish the product or service to the government. The Committee does not award contracts to NPAs after items are added to the PL, nor does the CNA recommendation dictate the Committee's decision. The government contract award is made by the appropriate contracting activity and is authorized by the PL addition in accordance with the JWOD Act.

The home-based NPA also asserts that the CNA recommendation was based on stale information, since the CNA evaluation did not consider that the home-based NPA is currently performing contact center services for USDA. The home-based NPA's comments state it is the incumbent. The Committee finds that the home-based NPA does not have a contract with the USDA for the Call Center, but a modest subcontract with the current commercial provider (IBM). Such commercial subcontracts are not evaluated by the Committee, as there is no requirement that commercial contracts meet JWOD Act standards. The home-based NPA established the subcontract after it was not recommended by the CNA to furnish the service. Prime contractors, not their subcontractors; have a contractual relationship with the government and primes are the incumbent. Therefore, the existence of a subcontract does not confer a priority over nonprofit agencies recommended to be the prime contractors through the established CNA process.

Having fully considered all appropriate information, including information submitted by the CNA as required by Committee regulations, the Committee is satisfied that the IT Service Desk Support service is suitable for procurement by the Government and that the AbilityOne nonprofit agency designated by the Committee to perform the service is qualified and capable.

Deletions

On 7/11/2014 (79 FR 40066–40067), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN: 2510–01–251–8548—Blanket, Insulation, Thermal, Vehicular.
NSN: 2510–01–251–9995—Panel, Insulation, Vehicular, Interior Left Hand Front Tunnel.
NSN: 2510–01–335–7363—Panel, Insulation, Vehicular, Interior Right Hand Front Tunnel.
NSN: 2510–01–421–8067—Panel, Insulation, Vehicular, Cab.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.

Label, Pressure-Sensitive Adhesive

NSN: 7530–00–577–4368.
NSN: 7530–00–577–4369.
NSN: 7530–00–577–4370.
NSN: 7530–00–577–4371.
NSN: 7530–00–577–4372.
NSN: 7530–00–577–4376.
NSN: 7530–00–982–0062.
NSN: 7530–00–982–0064.
NSN: 7530–00–982–0065.
NSN: 7530–00–982–0066.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: General Services Administration, New York, NY.
NSN: 8465–00–118–4956—Cover, Canteen, Water, Natural, 1 qt.
NPA: Lions Industries for the Blind, Inc., Kinston, NC.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia,

PA.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2014–19397 Filed 8–14–14; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps VISTA Project Progress Report for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Robert Cox, at 202–606–6851 or email to *vista@americorps.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on February 20, 2014. This comment period ended April 28, 2014. All comments and the disposition of each are addressed below.

One set of comments was in regard to the Member Development section of the Project Progress Report. One comment expressed appreciation for the change in how applicants report information in this section. Specifically, respondents are now asked to report the number of hours of member development opportunities provided to AmeriCorps VISTA members, where previously respondents were asked to report the number of AmeriCorps VISTA members that received member development opportunities. The commenter stated that counting hours will be less burdensome for respondents.

A second comment regarding the Member Development section suggested providing more detailed definitions of the individual member development areas. CNCS lists these member development areas (which include Community Volunteer Generation/Recruitment, Effective Volunteer Management, and Grantwriting) without detailed definition because they are broad functions that are reflected in the assignment descriptions of VISTA members. CNCS believes their meaning is understandable to individuals involved in sponsoring a VISTA project.

A third comment regarding the Member Development section was a suggestion to provide a higher character limit for the ''Other'' line than has been allowed in the past. CNCS notes that the character limit for respondents to provide professional development information for the ''Other'' area is higher than it has been in the past in the CNCS eGrants system and is of sufficient size to adequately spotlight professional development.

A fourth set of comments focused on the Demographics section of the Project Progress Report. One comment noted a lack of clarity on whether respondents are being asked to provide information about a duplicated or unduplicated count of community volunteers who are recruited and managed. Another comment expressed a preference for one combined count that reflects community volunteers who are recruited and managed. CNCS notes that the measures included in the Demographics section are a subset of the CNCS National Performance Measures, which include specific definitions and data collection standards for each measure. Those standards require that the total number of volunteers recruited and managed is an unduplicated count and that respondents control for double counting or select the measure that best fits their program model.

To clarify this requirement in the Project Progress Report, CNCS amended the Demographics section by creating one response line for community volunteers recruited and a separate response line for community volunteers managed. CNCS also added language that refers respondents to the definitions and data collection standards for each measure and thus the requirement to report an unduplicated count.

Additionally, CNCS also created one line for respondents to report the number of hours of service contributed by community volunteers and a separate line for respondents to report the number of hours of service contributed by community volunteers managed. CNCS also added language that refers respondents to where they can find the definitions and data collection standards for those measures, as well as every other measure in this section.

The fifth set of comments focused on the Performance Measure section of the Project Progress Report. One comment asked whether the instructions were requiring respondents to report on data collected for performance measures for the project in the aggregate or for each VISTA member individually. The CNCS requirement is neither. The CNCS requirement is for respondents to report progress with respect to each individual performance measure set that the respondent identified in their approved application. An individual performance measure set is based on the unique combination of a site and a capacity goal and may represent the activities of multiple VISTA members.

To further clarify the requirement, CNCS amended the Performance Measurement section to require respondents to enter data for each individual performance measure set that was created in the application. The CNCS eGrants system will also automatically display each performance measure set for which respondents must enter data, further clarifying the requirement.

Other comments regarding the Performance Measure section expressed the preference that CNCS require respondents to report data for the

project in the aggregate rather than at the individual performance measure set level and offered an opinion that data reported in disaggregated fashion would be burdensome for respondents to provide and would not result in meaningful information for CNCS.

CNCS acknowledges that the level of burden may be higher for some respondents to report on individual performance measure sets and has increased the burden estimate. CNCS notes that the increased burden stems from additional data entry into the CNCS eGrants reporting system and is not a burden caused by additional data collection or other reporting steps peculiar to reporting to CNCS on individual performance measure sets.

Further, given the unique and complex nature of capacity building activities, CNCS believes that the information reported at an individual performance measure set level will provide meaningful and valuable information about how respondents are using VISTA resources in a way that an aggregate cannot.

The intent of VISTA resources is to build capacity of individual organizations and programs to address poverty. Even sites that have similar capacity goals and performance measures—as expressed in individual performance measure sets—may achieve results at different rates, need different levels of VISTA resources to make progress, or require different types of service activities from VISTA members. Reporting data on individual performance sets is necessary for respondents, CNCS, and other stakeholders to monitor this variability in resources, aspirations and accomplishments, both to assist in the accomplishment of the individual project as well as to support the continuous improvement of the VISTA program as a whole.

Description: CNCS seeks to revise the Project Progress Report, which contains the instructions used by AmeriCorps VISTA sponsors to report on the use of AmeriCorps VISTA resources and on progress against their approved application.

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: Project Progress Report.

OMB Number: 3045–0038.

Agency Number: None.

Affected Public: AmeriCorps VISTA sponsoring organizations.

Total Respondents: 900.

Frequency: Four times a year for each sponsor in the first year; twice per year thereafter unless performance or nature of the project requires more frequent reporting and review.

Average Time per Response: 20 hours.

Estimated Total Burden Hours: 48,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 12, 2014.

D. Paul Monteiro,

Director, AmeriCorps VISTA.

[FR Doc. 2014–19414 Filed 8–14–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on September 8, 2014, will include new and pending administrative/minor disciplinary infractions and non-judicial punishments involving the Midshipmen attending the U.S. Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on September 8, 2014, from 8:30 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Library of Congress in Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on September 8, 2014, will include new and pending administrative/minor disciplinary infractions and non-judicial punishments involving the Midshipmen attending the U.S. Naval Academy to include but not limited to individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Dated: August 11, 2014.

P.A. Richelmi,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2014–19362 Filed 8–14–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0120]

Agency Information Collection Activities; Comment Request; State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 14, 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–0120 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments

during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, 202–205–1645.

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: State Educational Agency and Local Educational Agency—School Data Collection and Reporting under ESEA, Title I, Part A

OMB Control Number: 1810–0622.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 2,080.

Abstract: Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), State Educational Agencies (SEAs) must adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data, and to reserve funds for school improvement, State administration, and the State academic achievement awards program. This control number covers only the burden associated with the actual procedures an SEA must follow when adjusting ED-determined LEA allocations.

Dated: August 12, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–19436 Filed 8–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting/Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of an Open/Meeting and Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming open meeting and hearing of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Advisory Committee. Notice of an advisory committee hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Friday, September 12, 2014, beginning at 9:00 a.m. and ending at approximately 4:00 p.m. (EDT).

ADDRESSES: Trinity Washington University, O'Connor Auditorium, 125 Michigan Avenue NE., Washington, District of Columbia 20017.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Chen, Director of Programs, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act.

The one-day meeting/hearing will provide an opportunity for members of the public to suggest strategies and techniques to address the technical challenges involved in creating the Postsecondary Institution Ratings System (PIRS). In particular, the Committee seeks constructive, analytical input on how PIRS can successfully address challenges in one or more of the following ten areas: (1) Account for the diversity of American higher education; (2) Work within the financing structure of higher education; (3) Foster improvement in student and institutional outcomes; (4) Distinguish between consumer needs and accountability; (5) Overcome inadequacies and deficiencies in existing data; (6) Minimize unintended effects that undermine the objectives; (7) Contend with the subjective nature of ratings and rankings; (8) Ensure links to student aid improve access and completion; (9) Integrate with existing public data and information systems; (10) Provide for adequate pilot testing before full implementation.

Given its legislative charge, the Advisory Committee is especially interested in how PIRS might be designed to minimize unintended effects on Title IV recipients, in particular low-income students.

To request time for public comment, please email *ACSFA@ed.gov* with your name, contact information, and written testimony by August 25, 2014. Space is limited and will be allotted in order of registration. Advisory Committee staff will contact presenters *prior to the hearing* to confirm participation. To provide written comment in lieu of speaking at the hearing, please submit comments by email to *ACSFA@ed.gov* by August 25, 2014.

Space for the meeting/hearing is limited and you are encouraged to register early. You may register on the Advisory Committee's Web site, *http://www2.ed.gov/ACSFA* or by sending an email to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, mailing and email addresses, and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at

(202) 219–3032. The registration deadline is Tuesday, September 2, 2014.

Individuals who will need accommodations for a disability in order to attend the hearing (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Tuesday, September 2, 2014 by contacting Ms. Tracy Jones at (202) 219–2099 or via email at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The hearing site is accessible to individuals with disabilities. Individuals who use a telecommunications device for the deaf (TTY) may call the Federal Information Relay Service (FRS) toll free at 1–800–877–8339.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street NW., Suite 413, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *www2.ed.gov/ACSFA.*

Dated: August 11, 2014.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2014–19326 Filed 8–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States

Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC.	[DOE/EIS–0487]
Cameron LNG, LLC	[DOE/EIS–0488]
Jordan Cove Energy Project, L.P.	[DOE/EIS–0489]
Lake Charles Exports, LLC and Trunkline LNG Export, LLC.	[DOE/EIS–0491]
LNG Development Company, LLC (d/b/a Oregon LNG).	[DOE/EIS–0492]
Cheniere Marketing, LLC	[DOE/EIS–0493]
Excelerate Liquefaction Solutions I, LLC.	[DOE/EIS–0494]
CE FLNG, LLC	[DOE/EIS–0497]
Magnolia LNG, LLC	[DOE/EIS–0498]
Dominion Cove Point LNG, LP.	[DOE/EA–1942]
Southern LNG Company, L.L.C.	[DOE/EA–1963]
Golden Pass Products LLC	[DOE/EA–1971]
Sabine Pass Liquefaction, LLC.	[DOE/EA–1983]

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Availability of Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) announces the availability of the *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States* (Addendum).

FOR FURTHER INFORMATION CONTACT: John Anderson, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585; Edward LeDuc, U.S. Department of Energy (GC–51), Office of the Assistant General Counsel for Environment, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

ADDRESSES: The Addendum and other relevant documents are available for download at *http://www.energy.gov/fe/services/natural-gas-regulation,* and 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.

SUPPLEMENTARY INFORMATION: The purpose of this Addendum is to provide additional information to the public regarding the potential environmental impacts of unconventional natural gas exploration and production activities. DOE has received many comments in related proceedings expressing concerns about the potential impacts from increased development of unconventional natural gas resources in the United States, particularly production that involves hydraulic fracturing. While not required by the National Environmental Policy Act (NEPA), DOE has prepared this Addendum in an effort to be responsive to the public and provide the best information available.

On June 4, 2014, DOE published a **Federal Register** notice (79 FR 32258) announcing the availability of the draft Addendum for public review and comment. The comment period closed on July 21, 2014. DOE received 18 comment submittals, comprised of a total of 40,754 individual comments. DOE considered all the comments and prepared the final Addendum. In an effort to assist readers DOE used bold text and vertical lines in the margin to indicate where the draft Addendum has been revised or supplemented. A summary of the public comments and DOE's responses is included in the final Addendum.

Issued in Washington, DC, on August 11, 2014.

Christopher A. Smith,

Principal Deputy Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2014–19368 Filed 8–14–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Procedures for Liquefied Natural Gas Export Decisions

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Final revised procedures.

SUMMARY: The U.S. Department of Energy (DOE or the Department) will act on applications to export liquefied natural gas (LNG) from the lower-48 states to countries with which the United States does not have a free trade agreement requiring national treatment for natural gas only after completing the review required by the National Environmental Policy Act (NEPA), suspending its practice of issuing conditional decisions prior to final authorization decisions.

DATES: *Effective Date:* August 15, 2014.

FOR FURTHER INFORMATION CONTACT: John Anderson, U.S. Department of Energy, 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) 586–5600; Samuel Walsh, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6732.

SUPPLEMENTARY INFORMATION:

I. Proposed Procedural Change

The Department of Energy is responsible for authorizing exports of natural gas to foreign nations pursuant to section 3 of the Natural Gas Act, 15 U.S.C. 717b. For proposed exports to countries with which the United States lacks a free trade agreement requiring national treatment for trade in natural gas (non-FTA countries), the Department conducts an informal

adjudication and grants the application unless the Department finds that the proposed exportation will not be consistent with the public interest. 15 U.S.C. 717b(a). Before reaching a final decision on a non-FTA application, the Department must also comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* Typically, the agency responsible for permitting the export facility serves as the lead agency in the NEPA review process and DOE serves as a cooperating agency within the meaning of the Council on Environmental Quality's (CEQ) regulations. 40 CFR 1501.4, 1501.5. For LNG terminals located onshore or in state waters, the agency responsible for permitting the export facilities is the Federal Energy Regulatory Commission (FERC) pursuant to Section 3(e) of the Natural Gas Act. 15 U.S.C. 717b(e). For LNG terminals located offshore beyond state waters, the responsible agency is the Maritime Administration (MARAD) within the Department of Transportation pursuant to Section 3(9) of the Deepwater Ports Act, as amended by Section 312 of the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112–213).

For more than 30 years, DOE's regulations governing natural gas imports and exports have allowed for conditional decisions, on a discretionary basis, before DOE completes its review process.[1] DOE's regulations at 10 CFR 590.402, entitled ''Conditional orders,'' state that DOE may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. In the past three years, DOE has issued eight conditional authorizations for exports of LNG to non-FTA countries.[2] In each of these proceedings, DOE has made preliminary findings on all factors relating to the public interest other than environmental issues. The conditional authorization orders have explained that, before taking final action, DOE will reconsider its public interest analysis in light of the information gathered in the environmental review.[3]

DOE has acted on non-FTA LNG export applications according to the order of precedence posted on DOE's Web site on December 5, 2012. On June 4, 2014, however, DOE published a notice in the **Federal Register** proposing to suspend its practice of issuing conditional decisions prior to completion of the NEPA review process for LNG export applications from the lower-48 states. *Dep't of Energy, Proposed Procedures for Liquefied Natural Gas Export Decisions; Notice of Proposed Procedures,* 79 FR 32261 (Proposed Procedures Notice). DOE did not propose to amend 10 CFR 590.402 and, therefore, under the proposal would retain discretion to issue conditional decisions in the future.

DOE explained that, under the newly proposed procedures, DOE would cease to act on non-FTA LNG export applications according to the published order of precedence. Instead, DOE would act on applications in the order they become ready for final action. The Proposed Procedures Notice stated that an application is ready for final action when DOE has sufficient information on which to base a public interest determination and when DOE has completed its NEPA review. The Proposed Procedures Notice further explained that, for purposes of setting the order in which DOE will act, an application would be deemed to have completed the pertinent NEPA review process as follows: (1) For those projects requiring an Environmental Impact Statement (EIS), 30 days after publication of a Final EIS; (2) for projects for which an Environmental Assessment (EA) has been prepared, upon publication by DOE of a Finding of No Significant Impact (FONSI); or (3) upon a determination by DOE that an application is eligible for a categorical exclusion pursuant to DOE's regulations implementing NEPA, 10 CFR 1021.410, Appx. A & B. DOE explained that this test would apply in the same fashion regardless of whether FERC, MARAD, or DOE has served as the lead agency for preparation of the environmental review document.

The Proposed Procedures Notice also made clear that the proposed procedures would not affect the continued validity of the conditional authorizations DOE had already issued. For those applications, DOE stated it would proceed as explained in the orders: By reconsidering the conditional authorization in light of the information gathered in the environmental review once that review is complete and taking appropriate final action.

The Department offered four reasons for the proposed procedural change. *See* Proposed Procedures Notice at 79 FR 32263–32264. First, the Department explained that conditional authorizations no longer appear necessary for FERC or the majority of applicants to commit resources to the NEPA review process. Second, the Department explained that by suspending its practice of issuing conditional decisions and ceasing to follow the order of precedence published on December 5, 2012, DOE would better be able to ensure prompt action on applications that are otherwise ready to proceed. Third, the Department explained that the proposed procedures would improve the quality of information on which DOE bases its decisions. Finally, the Department noted that suspending its practice of issuing conditional decisions would better allocate departmental resources by reducing the likelihood that the Department would be forced to act on applications with little prospect of proceeding.

II. Public Comments

The Department received 74 comments in response to the Proposed Procedures Notice.[4] Many of the comments expressed general support for or opposition to LNG exports or otherwise urged substantive changes to DOE's public interest analysis. DOE officials have read and considered these comments carefully, but consider them outside the scope of the Proposed Procedures Notice, which addressed only whether DOE should suspend its current practice of issuing conditional decisions prior to completion of NEPA review.

The remaining relevant comments generally fall into three groups: Comments on the rationale DOE provided for the proposed procedures, comments on the test proposed for when an application is ready for final decision, and comments on the timing of final decisionmaking once an application is ready for final action.

A. Comments on the Rationale for the Proposed Procedures

Public Comments: DOE's first rationale advanced in support of the proposed procedural change was that conditional decisions no longer appear necessary for FERC or the majority of

[1] *Dep't of Energy, Import and Export of Natural Gas; New Administrative Procedures; Proposed Rule,* 46 FR 44696 (Sept. 4, 1981).

[2] *LNG Develop. Co., LLC (d/b/a Oregon LNG),* DOE/FE Order No. 3465 (July 31, 2014) [hereinafter *Oregon LNG*]; *Jordan Cove Energy Project, L.P.,* DOE/FE Order No. 3413 (March 24, 2014); *Cameron LNG, LLC,* DOE/FE Order No. 3391 (Feb. 11, 2014); *Freeport LNG Expansion, L.P. et al.,* DOE/FE Order No. 3357 (Nov. 15, 2013); *Dominion Cove Point LNG, LP,* DOE/Order No. 3331 (September 11, 2013); *Lake Charles Exports, LLC,* DOE/FE Order No. 3324 (Aug. 7, 2013); *Freeport LNG Expansion, L.P. et al.,* DOE/FE Order No. 3282 (May 17, 2013); *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961 (May 20, 2011).

[3] *See, e.g., Oregon LNG,* DOE/FE Order No. 3465, at 138.

[4] The comments are available at: *http://energy.gov/fe/proposed-procedures-liquefied-natural-gas-export-decisions* (Comments).

applicants to commit resources to the NEPA review process. Many commenters supported this claim. Several other commenters questioned it, however, observing that conditional decisions may have value for applicants even if they have already initiated NEPA review. Likewise, they asserted that conditional decisions may be of value to other stakeholders, such as financial parties, LNG purchasers, or foreign governments.

DOE Response: DOE acknowledges that conditional decisions may hold value for some applicants and may supply useful information to third parties. Nevertheless, the justification for issuing conditional decisions before completing NEPA review is much weaker in an environment where applicants are willing to commit resources to NEPA review even without a conditional decision. In the approximately 18 months since we established the existing order of precedence, we have had an opportunity to observe industry developments, as well as the progress of numerous individual projects in the FERC-led NEPA review processes. We have seen numerous instances where applicants have proven willing to commit resources to NEPA review before having received a conditional authorization. As noted above, to date DOE has issued eight conditional authorizations (including one, *Sabine Pass,* which is now final) cumulatively authorizing non-FTA exports in a combined total of 10.52 billion cubic feet per day of natural gas (Bcf/d). Many of these applicants had made substantial progress in preparing resource reports for the NEPA review process before receiving their conditional authorizations. Likewise, among applicants that have not yet received a conditional decision, at least seven projects constituting 9.51 Bcf/d in requested export capacity have made considerable progress in the NEPA review process.[5] These examples demonstrate that, broadly speaking, conditional decisions are no longer necessary for applicants to commit substantial resources to the NEPA review process.

Public Comments: The second rationale advanced in support of the proposed procedural change was that it would ensure that applications otherwise ready for DOE action will not be held back by their position in the order of precedence. Many commenters voiced support for the proposed procedures for this reason. One commenter, however, asserted that under the proposed procedures, DOE will no longer concurrently evaluate whether applications are in the public interest while these applications are undergoing NEPA review. This commenter, therefore, concluded that the proposed procedures would lengthen DOE's review time. This commenter also asserted that it is arbitrary for DOE to require the completion of NEPA review before DOE completes its public interest review.

DOE Response: DOE wishes to clarify that applicants can and should apply concurrently to DOE and to FERC or MARAD. DOE will begin the process of evaluating whether an application is in the public interest prior to completion of NEPA review, but will not issue a final decision before the NEPA review is complete. The requirement that NEPA review be completed prior to a final public interest determination is not arbitrary, but rather flows from the most fundamental requirement in NEPA: that agencies consider environmental impacts prior to deciding to undertake a major federal action. *See* 10 CFR 1021.210(b) (''DOE shall complete its NEPA review for each DOE proposal before making a decision on the proposal.''); *see also Silentman* v. *Federal Power Commission,* 566 F.2d 237 (D.C. Cir. 1977) (a cooperating agency must await the lead agency's completion of its impact statement before taking final action).

Public Comments: The third rationale advanced in support of the proposed procedural change was that it would improve the quality of information on which DOE bases its decisions. One reason provided for why the proposed procedures would improve the quality of information is that, by restricting its decisions to applicants that have undertaken the considerable expense of providing the engineering and design information necessary to complete NEPA review, DOE would make its decisions on a cohort of projects that are, on average, more likely to be financed and built than those that have not completed NEPA review. By focusing on projects that are more likely to proceed, DOE reasoned that it would be better positioned to evaluate the cumulative impacts of its decisions on natural gas markets. One commenter rejected this reasoning, stating that applicants with the wherewithal to build LNG export facilities also have the wherewithal to complete the permitting process.

DOE Response: The commenter's observation that applicants with the wherewithal to build LNG export facilities also have the wherewithal to complete the permitting process supports rather than undermines DOE's reasoning. DOE's view is that LNG projects for which NEPA review is complete have already shown themselves more likely to advance to commercial operation than projects that have not yet commenced the NEPA process (or have stalled at that stage) for whatever reason. By eliminating the possibility that DOE will issue conditional decisions on applications that never complete the NEPA review process, the proposed procedures will help to focus DOE's decisionmaking on projects that are more likely to proceed and, therefore, will benefit DOE's ability to assess cumulative market impacts.

Public Comments: DOE noted that it generally would be preferable to integrate the consideration of all public interest factors in a single, final order. Under existing procedures, DOE has focused on economic and international factors at the conditional decision stage and considered environmental factors at the final stage, once NEPA review is complete. Under the proposed procedures, DOE would evaluate all such public interest factors in one order. One commenter asserted that DOE failed to explain why it is generally preferable to integrate analysis of all public interest factors in a single order.

DOE Response: DOE's public interest determinations involve consideration of a wide range of factors. These public interest factors include economic, international, and environmental considerations that, under current practice, have been bifurcated between DOE's conditional and final authorizations. In some instances, the bifurcation is not problematic because the issues are largely distinct. In other instances, however, there may be overlap between environmental and non-environmental issues that would be more efficiently and thoroughly resolved in a single order. For these reasons, DOE believes that it is generally preferable to consider these factors concurrently and to present them in a single analysis. Further, doing so demonstrates that each factor is given full consideration and allows DOE to communicate its decision to the public in a simpler, more comprehensible way.

[5] *See Corpus Christi Liquefaction, LLC,* FERC Docket No. CP12–507; *Excelerate Liquefaction Solutions (Port Lavaca I), LLC et al.,* FERC Docket Nos. CP14–71, 72 & 73; *Southern LNG Co. LLC,* FERC Docket No. CP14–103; *CE FLNG,* FERC Docket No. PF13–11, *Golden Pass Products LLC,* FERC Docket No. PF13–14; *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.,* FERC Docket No. CP14–12; *Magnolia LNG, LLC,* FERC Docket No. PF13–9. In addition to these projects that have made substantial progress, two others have recently been accepted for pre-filing at FERC. *See Gulf LNG Liquefaction Company, L.L.C.,* FERC Docket No. PF 13–4, *Louisiana Energy, LLC,* FERC Docket No. PF14–17.

B. Comments on the Test for When an Application is Ready for Final Decision

Public Comments: As explained above, DOE proposed that it would act on applications in the order they become ready for final decision. DOE specified that an application is ready for final decision when DOE has completed the NEPA review and when DOE has sufficient information on which to base a public interest determination. One commenter recommended that the requirement that DOE has sufficient information on which to base a public interest determination be removed. This commenter asserted that, because the Natural Gas Act creates a rebuttable presumption in favor of authorizing imports and exports, DOE lacks the power to ensure that the record in a proceeding is complete before taking final action.

DOE Response: In the revised procedures, DOE will retain the requirement that it have sufficient information on which to base a public interest determination as a predicate to final action. The commenter is correct that the Natural Gas Act creates a rebuttable presumption in favor of authorizing imports and exports. But that presumption does not remove DOE's power to impose informational requirements on applicants or to decide when it has a complete record on which to base its decision. *See, e.g.,* 10 CFR 590.202, 590.203.

Public Comments: DOE proposed that it would act on applications in the order they become ready for final decision and that an application is ready for final decision when DOE has completed the pertinent NEPA review. DOE further specified that the application will be deemed to have completed the pertinent NEPA review (1) for those projects requiring an EIS, 30 days after publication of a Final EIS, (2) for projects for which an EA has been prepared, upon publication by DOE of a Finding of No Significant Impact (FONSI), or (3) upon a determination by DOE that an application is eligible for a categorical exclusion pursuant to DOE's regulations implementing NEPA, 10 CFR 1021.410, Appx. A & B.

Commenters urged DOE to clarify that the pertinent NEPA review may be one in which DOE serves as a cooperating agency and either FERC or MARAD serves as lead agency. Relatedly, one commenter sought clarification as to whether DOE intends to issue a FONSI in cases where it adopts an EA prepared by another agency, and whether DOE may accept a categorical exclusion determination made by another agency.

DOE Response: The pertinent NEPA review referred to in the Proposed Procedures Notice may be one for which another agency is the lead agency and DOE is a cooperating agency, provided that DOE ultimately elects to adopt the EA or EIS produced by the lead agency. As a cooperating agency, DOE may adopt an EIS or EA prepared by another agency and need not re-publish those documents for additional comment. 40 CFR 1506.3(c). Nevertheless, even when it is participating as a cooperating agency, DOE is ultimately responsible for its own NEPA compliance. Therefore, where another agency has prepared an EA or EIS that DOE has chosen to adopt, DOE must conduct its own independent analysis and issue its own FONSI or Record of Decision, respectively. Similarly, DOE must issue its own categorical exclusion determination. A categorical exclusion determination issued by another agency may inform DOE's decisionmaking, but DOE may only determine that a proposed action is categorically excluded from NEPA review in accordance with its own regulations. 10 CFR 1021.410, Appx. A & B. We note that DOE's list of categorical exclusions applicable to specific agency actions includes: ''approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.'' *Id.* Appx. B at B5.7.

Public Comments: One commenter questioned why, for projects requiring an EIS, completion of the NEPA review process occurs 30 days after publication of the EIS rather than upon publication of the EIS.

DOE Response: The CEQ regulations implementing NEPA generally prohibit agencies from making a final decision in reliance on an EIS until 30 days after publication by the Environmental Protection Agency of the notice of availability for the final EIS. 40 CFR 1506.10(b)(2). In cases where DOE is a cooperating agency in the preparation of an EIS, DOE must also adopt the final EIS before it can issue a Record of Decision.

C. Comments Related to the Timing of Final Decisions

Public Comments: Numerous commenters urged DOE to establish a uniform deadline by which DOE will issue final decisions after an application's NEPA review is complete. These commenters contend that a deadline would provide greater regulatory certainty enabling better planning and investment decisions.

DOE Response: DOE is sympathetic to this concern. Indeed, one of the overriding purposes of the procedural changes announced in this notice is to enable prompt action on applications that are ready for final decision. However, DOE has several concerns with creating a uniform deadline. First, each application contains novel issues such that a deadline that is reasonable for the majority of cases may be unreasonable in an individual case. Second, DOE lacks control over when the NEPA review for applications is complete. Were the final EIS for several applications to be completed at or around the same time, compliance with a fixed deadline may be unworkable. For these reasons, DOE declines to create a deadline for final decisions in this notice.

III. Revised Procedures

For the reasons provided in the Proposed Procedures Notice and in this notice, DOE will implement the procedural changes substantially as proposed. Specifically, DOE will suspend its practice of issuing conditional decisions on applications to export LNG to non-FTA countries from the lower-48 states.[6]

DOE will no longer act in the published order of precedence, but will act on applications in the order they become ready for final action. An application is ready for final action when DOE has completed the pertinent NEPA review process and when DOE has sufficient information on which to base a public interest determination. For purposes of determining the order in which DOE will act on applications before it, DOE will use the following criteria: (1) For those projects requiring an EIS, 30 days after publication of a Final EIS, (2) for projects for which an EA has been prepared, upon publication by DOE of a Finding of No Significant Impact, or (3) upon a determination by DOE that an application is eligible for a categorical exclusion pursuant to DOE's

[6] The revised procedures will apply only to exports from the lower-48 states. In the Proposed Procedures Notice, DOE stated that no long-term applications to export LNG from Alaska were currently pending and, therefore, DOE could not say whether there may be unique features of Alaskan projects that would warrant exercise of the DOE's discretionary authority to issue conditional decisions. After publishing the Proposed Procedures Notice, DOE received one application to export LNG from Alaska. *See* Alaska LNG Project LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas, Docket No. 14–96–LNG (July 18, 2014). DOE will consider whether to issue a conditional decision on that application, or any future application to export from Alaska, in the context of those proceedings.

regulations implementing NEPA, 10 CFR 1021.410, Appx. A & B.

These revised procedures will not affect the continued validity of the conditional orders the Department has already issued. For those applications, the Department will proceed as explained in the conditional orders: When the NEPA review process for those projects is complete, the Department will reconsider the conditional authorization in light of the information gathered in the environmental review and take appropriate final action.

Issued in Washington, DC, on August 11, 2014.

Christopher A. Smith,

Principal Deputy Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2014–19364 Filed 8–14–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI14–3–000]

Chenega Bay Utilities; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention

b. *Docket No:* DI14–3–000

c. *Date Filed:* June 6, 2014

d. *Applicant:* Chenega Bay Utilities

e. *Name of Project:* Chenega Hydroelectric Project

f. *Location:* The proposed Chenega Hydroelectric Project will be located on Anderson Creek immediately downstream from the city water supply dam, near the village of Chenega Bay, Alaska, affecting T. 001S, R. 008E, S. 23 and 26, Seward Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 USC 817(b) (2012).

h. *Applicant Contact:* Charles Totemoff, Chenega Bay Utilities, 3000 C Street, Suite 301, Anchorage, AK 99503; telephone: (907) 277–5706, *cwt@chenegacorp.com mail to: mpdpe@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or Email address: *Jennifer.Polardino@ferc.gov*

j. Deadline for filing comments, protests, and/or motions is: 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) (2014) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*.

Please include the docket number (DI14–03–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed 60-kW run-of-river Chenega Hydroelectric Project will consist of: (1) An intake chamber, making use of Anderson Creek (2) a 14-inch-diameter, 1600-foot-long pipe, which will be buried a minimum of three feet under the existing roadway and will convey the water from the intake to the powerhouse; (3) a 16 feet by 20 feet powerhouse at an elevation of 64 feet above mean sea level; (4) a twin-jet Pelton turbine rated at 170 feet of net head coupled to a generator with an average inflow of 5.4 cfs; (5) a 24-inch diameter, 40-foot long culvert pipe (6) a 4.5-foot-wide by one-foot-deep stream channel excavated from the existing ground (7) a screening box and new constructed spillway; (8) and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—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, .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.

o. Filing and Service of Responsive Documents—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–19302 Filed 8–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2895–008; ER11–2292–007; ER11–3942–006; ER11–2293–007; ER10–2917–008; ER11–2294–007; ER13–1613–001; ER10–2918–009; ER10–2920–008; ER11–3941–006; ER10–2921–008; ER10–2922–008; ER10–2966–008.

Applicants: Bear Swamp Power Company LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Rumford Falls Hydro LLC.

Description: Supplement to December 30, 2013 Updated Market Power Analysis for the Northeast Region of the Brookfield Companies.

Filed Date: 7/31/14.

Accession Number: 20140731–5214.

Comments Due: 5 p.m. ET 8/21/14.

Docket Numbers: ER14–2608–000.

Applicants: California Independent System Operator Corporation.

Description: 2014–08–06_BPA_DynamicTransferAgreement to be effective 10/1/2014.

Filed Date: 8/6/14.

Accession Number: 20140806–5130.

Comments Due: 5 p.m. ET 8/27/14.

Docket Numbers: ER14–2609–000.

Applicants: 3 Phases Energy Services, LLC.

Description: The California Independent System Operator submits Tariff 3 Phases Energy Services, LLC submits Request for Waiver of Section 37.11.1.

Filed Date: 8/6/14.

Accession Number: 20140806–5165.

Comments Due: 5 p.m. ET 8/27/14.

Docket Numbers: ER14–2610–000.

Applicants: Southwestern Public Service Company.

Description: 2014–8–7_SPS–GSEC–BCEC-South-CA–672–0.0.0-filing to be effective 8/8/2014.

Filed Date: 8/7/14.

Accession Number: 20140807–5010.

Comments Due: 5 p.m. ET 8/28/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–4–000.

Applicants: Macho Springs Power I, LLC.

Description: Quarterly Land Acquisition Report and Request for Waiver of Macho Springs Power I, LLC.

Filed Date: 8/6/14.

Accession Number: 20140806–5158.

Comments Due: 5 p.m. ET 8/27/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–586–000.

Applicants: HSC Fuel Cell 1, LLC.

Description: Form 556 of HSC Fuel Cell 1, LLC.

Filed Date: 6/17/14.

Accession Number: 20140617–5181.

Comments Due: None Applicable.

Docket Numbers: QF14–641–000.

Applicants: REI 2, LLC.

Description: Form 556 of REI 2, LLC.

Filed Date: 7/7/14.

Accession Number: 20140707–5083.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–19382 Filed 8–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–193–000]

Aguirre Offshore GasPort, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Aguirre Offshore Gasport Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Aguirre Offshore GasPort Project (Project), proposed by Aguirre Offshore GasPort, LLC (Aguirre LLC), a wholly owned subsidiary of Excelerate Energy, LP in the above-referenced docket. Aguirre LLC is seeking authorization from the FERC to develop, construct, and operate a liquefied natural gas (LNG) import terminal off the southern coast of Puerto Rico.

The draft EIS assesses the potential environmental effects of the construction and operation of the Aguirre Offshore GasPort Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would ensure that impacts in the Project area would be avoided or minimized and would not be significant. Construction and operation of the Project would result in mostly temporary and short-term environmental impacts; however, some long-term and permanent environmental impacts would occur.

The U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, U.S. Coast Guard, Puerto Rico Permits Management Office, Puerto Rico Environmental Quality Board, Puerto Rico Planning Board, Puerto Rico Department of Natural and Environmental Resources, and Puerto Rico Department of Health participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal, and participate in the NEPA analysis. In addition, other federal, state, and local agencies may use this EIS in approving or issuing permits for all or part of the proposed Project. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Project.

The Project is being developed in cooperation with the Puerto Rico Electric Power Authority (PREPA) for the purpose of receiving, storing, and regasifying the LNG to be acquired by PREPA; and delivering natural gas to PREPA's existing Aguirre Power Complex (Aguirre Plant) in Salinas, Puerto Rico. The Project will help diversify Puerto Rico's energy sources, allow the Aguirre Plant to meet the EPA's Mercury and Air Toxics Standard rule, reduce fuel oil barge traffic in

Jobos Bay, and contribute to price stabilization for power in the region. The draft EIS addresses the potential environmental effects of the construction and operation of the following Project facilities:

- An offshore berthing platform;
- an offshore marine LNG receiving facility;
- a Floating Storage and Regasification Unit moored at the offshore berthing platform; and
- a 4.1-mile-long (6.6 kilometer) subsea pipeline connecting the Offshore GasPort to the Aguirre Plant.

The FERC staff mailed copies of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; other interested individuals and groups; newspapers and libraries in the Project area; and parties to this proceeding. The draft EIS was also translated in Spanish. Paper copy versions of this EIS, in English or Spanish, were mailed to those specifically requesting them; all others received a CD version. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

If you would like a hard copy of the draft EIS, please contact the Public Reference Room.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments before September 29, 2014.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket numbers (CP13–193–000) 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.* Please carefully follow these instructions so that your comments are properly recorded.

(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 submitting brief, text-only comments on a project;

(2) You can file your comments electronically by 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.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; 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.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public comment meeting its staff will conduct in the Project area to receive comments on the draft EIS. The Puerto Rico Permits Management Office will jointly conduct this meeting. We encourage interested groups and individuals to attend and present oral comments on the draft EIS. Transcripts of the meetings will be available for review in eLibrary under the Project docket numbers. The meetings will begin at 4:00 p.m. and are scheduled as follows:

Date	Location
September 9, 2014.	Lions Club, Avenida Los Veteranos, (Entrance by Pizza Hut), Guayama, 787–864–1925.
September 10, 2014.	Marina de Salinas, P.R. 701 (end) Playa Ward, Salinas, 787–824–3185.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–193). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnline *Support@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–19300 Filed 8–14–14; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12588–010]

Hydraco Power, Inc.; Notice of Intent To Terminate Exemption (5 MW or Less) and Soliciting Comments, Protests, or Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Notice of Intent to Terminate Exemption

b. *Project No.:* 12588–010

c. *Date Initiated:* August 7, 2014

d. *Exemptee:* Hydraco Power, Inc.

e. *Name and Location of Project:* The A.H. Smith Dam Hydroelectric Project is located on the San Marcos River near the town of Martindale, Caldwell County, Texas.

f. *Exemptee Contact Information:* Mr. Warren David Long, Owner, Hydraco Power, Inc., P.O. Box 280, 204 Main Street, Martindale, Texas, 78655, (512) 357–1456.

g. *FERC Contact:* Jennifer Polardino, (202) 502–6437, *Jennifer.Polardino@ferc.gov*

h. Deadline for filing comments, protests, or motions to intervene is 30 days from the issuance of this notice by the Commission. Please file your

submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii). To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf*. In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf*. You must include your name and contact information at the end of your comments. Please include the project number (P–12588–010) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of any submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426.

i. *Description of Project Facilities:* The project utilizes the existing facilities: (1) A 10.5-foot-high by 86.5-foot-long concrete dam; (2) a 3-foot-wide by 4-foot-high wooden stopgate positioned in the east bank of the dam which regulates flows to the turbine; (3) a 10.62-acre impoundment; (4) a powerhouse; (5) a 150-kW turbine-generator unit; (6) a trashrack with 2-inch bar spacing; and (9) appurtenant facilities. The exemptee stated that the rehabilitation of the project would consist of (1) repairs to the existing powerhouse; (2) refurbishment of the existing turbine and trashrack; (3) installation of a new 100-foot-long, 480-volt buried transmission line; and (4) installation of a water surface elevation gage in the headpond.

j. *Description of Proceeding:* The exemptee is in violation of Article 10 of its exemption, which was granted June 2, 2006 (115 FERC ¶ 62,250). Article 10 states, in pertinent part, that the Commission may revoke this exemption if actual construction of any proposed or required facility has not begun within two years (i.e., by June 1, 2008) or has not been completed within four years from the issuance date of the exemption (i.e., by June 1, 2010).

The exemptee's 2008 plan and schedule stated the project would be operational by June 2009. The exemptee has only recently completed minimal work to the project which includes: (a) Portage and safety signage as required by Article 15 of the exemption; (b) the installation of new trashracks; (d) exterior lighting for dam and spill way; and (c) installation of the underground portion of the transmission line. The transmission line is not connected to the powerhouse or power pole because it has not met the requirements for interconnection with the transmission grid. The construction on the powerhouse interior is currently at a standstill, which includes rebuilding the generating unit. The Commission has made repeated attempts requesting the exemptee to submit a plan and schedule to restore the project. To date, the exemptee has not filed a plan and schedule to complete project construction or to surrender the exemption. The exemptee's most recent filing on August 1, 2014 stated that it cannot provide a fixed time frame when the project would resume generation due to the indeterminable time frame of major component repairs. In the August 1, 2014 filing, the licensee stated that it would hopefully start generation within the next three years or sooner.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the Docket number (P–12588–010) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

l. *Comments, Protests, or Motions to Intervene:* 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, .212, .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 proceeding.

m. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title ''COMMENTS, PROTEST,'' or ''MOTIONS TO INTERVENE,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments or protests must set forth their evidentiary basis. All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served on each representative of the exemptee specified in item f above. A copy of all other filings in reference to this notice 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.

n. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: August 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–19301 Filed 8–14–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0347; FRL–9915–27–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal)'' (EPA ICR No. 1681.08, OMB Control No. 2060–0290) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller

description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 15, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0347, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Sources are owners/operators of facilities which produce polymers and resins from epichlorohydrin and sources which manufacture epichlorohydrin-modified non-nylon polyamide resins. EPA and delegated states will use the information identify new, modified, reconstructed, or existing sources, or process changes which may affect the source's status and to ensure that affected sources are meeting the standards.

Form Numbers: None.

Respondents/affected entities: Epoxy resin and non-nylon polyamide production facilities.

Respondent's obligation to respond: Mandatory (40 CFR Part 63, Subpart W).

Estimated number of respondents: 7 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Total estimated burden: 3,961 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $389,981 (per year), includes $9,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There in an adjustment increase in the respondent burden and a decrease in the Agency burden. In addition, there is an increase in the total number of responses. This is not due to program changes. These changes occurred because the previous ICR did not consistently account for the respondent reporting requirements. This ICR corrected the number and frequency of each report, including semiannual SSM reports, quarterly excess emission reports, and annual CMS summary reports, to ensure that all burden calculations are consistent with the regulatory requirement. The previous ICR also included several reporting burden under Table 1, Section 5 Recordkeeping Requirements. This has been corrected in the current ICR.

Spencer Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–19369 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9016–5]

Environmental Impact Statements; Notice of Availability

Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 08/04/2014 Through 08/08/2014

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140221, Draft EIS, USFS, ID, Pocatello, Midnight, and Michaud Allotment Management Plan Revisions, Comment Period Ends: 11/12/2014, *Contact:* Jeffery Hammes (208) 236–7500.

EIS No. 20140222, Draft EIS, NRC, TN, Generic-License Renewal of Nuclear Plants Regarding Sequoyah Nuclear Plant, Units 1 and 2, Comment Period Ends: 09/29/2014, *Contact:* David Drucker 301–415–6223.

EIS No. 20140223, Draft EIS, FERC, 00, Algonquin Incremental Market Project, Comment Period Ends: 09/29/2014, *Contact:* Magdalene Suter 202–502–6463.

EIS No. 20140224, Draft EIS, FERC, PR, Aguirre Offshore GasPort Project, Comment Period Ends: 09/29/2014, *Contact:* Gertrude Johnson 202–502–6692.

EIS No. 20140225, Final EIS, USFS, CA, Tule River Reservation Protection Project, Review Period Ends: 09/22/2014, *Contact:* Richard Stevens 559–539–2607.

EIS No. 20140226, Final EIS, USACE, NC, Bogue Banks Coastal Storm Damage Reduction, Review Period Ends: 09/15/2014, *Contact:* Eric K. Gasch 910–251–4553.

EIS No. 20140227, Final EIS, DOE, NY, Champlain Hudson Power Express Transmission Line Project (DOE/EIS–0447), Review Period Ends: 09/15/2014, *Contact:* Brian Mills 202–586–6287.

EIS No. 20140228, Draft EIS, FTA, CA, Redlands Passenger Rail Project, Comment Period Ends: 09/29/2014, *Contact:* Dominique Paukowits 415–744–2735.

EIS No. 20140229, Final EIS, DOE, LA, Adoption—Cameron Liquefaction Project, *Contact:* John Anderson 202–586–0521.

The U.S. Department of Energy (DOE) has adopted the U.S. Federal Energy Regulatory Commission's final EIS #20140133, filed with USEPA 04/30/2014. DOE was a cooperating agency and recirculation of the document is not necessary under Section 1306.3(c) of the CEQ Regulations.

Amended Notices

EIS No. 20140217, Draft Supplement, NNSA, TN, Production of Tritium in a Commercial Light Water Reactor, Comment Period Ends: 09/22/2014, *Contact:* Curtis Chambellan 505–845–5073.

Revision to the FR Notice Published on 08/08/2014; Comment Period End Date should read 09/22/2014.

Dated: August 12, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–19451 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Notification of a Public Meeting of the Great Lakes Advisory Board; FRL–9915–15–Region–5

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public meeting of the Great Lakes Advisory Board (Board). The purpose of this meeting is to discuss advice to strengthen the effectiveness of the Great Lakes Restoration Initiative (GLRI).

DATES: The public meeting will be held Wednesday, August 27, 2014 from 10:00 a.m. to 4:00 p.m. Central Time, 11:00 a.m. to 5:00 p.m. Eastern Time. An opportunity will be provided to the public to comment.

ADDRESSES: The public meeting will be held at the EPA Region 5 Offices, Lake Huron Room, twelfth floor, in the Ralph H. Metcalfe Federal Building, 77 W. Jackson Boulevard, Chicago, Illinois, 60604. The teleconference number is (877) 744–6030, participant code 81805990.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by telephone at 312–886–6815 or email at *cestaric.rita@epa.gov.* General information on the GLRI and the Board can be found at *http://www.glri.us.*

SUPPLEMENTARY INFORMATION:

Background: The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 18 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions, and as technical experts.

Availability of Meeting Materials: The agenda and other materials in support of the meeting will be available on the GLRI Web site at *http://www.glri.us* in advance of the meeting.

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by August 25, 2014 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements must be received by August 25, 2014 so that the information may be made available to the Board for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: one each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting to give EPA as much time as possible to process requests.

Dated: July 28, 2014.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2014–19418 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0440; FRL–9911–69]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 11, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0440, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Michael Yanchulis.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 209 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Chemical name
000100–01135	100	ZPP 1560 AS Herbicide	Glyphosate diammonium salt.
000100–01293	100	Traxion GT	Glyphosate.
000100–01325	100	Flexstar GT Herbicide	Glyphosate; Sodium salt of fomesafen.
000100–01518	100	Naviva LF	Pasteuria spp.—Pr3.
000264–00567	264	Balance Herbicide	Isoxaflutole.
000264–00843	264	Iodosulfuron 10 WDG Herbicide	Iodosulfuron-methyl-sodium.
000264–00846	264	AE 1283742	Clothianidin, Imidacloprid.
000264–00940	264	Gustafson Vitavax-PCNB Flowable Fungicide	Carboxin; Pentachloronitrobenzene.
000264–00942	264	Gustafson Thiram 50WP Dyed	Thiram.
000264–00943	264	RTU-Vitavax-Thiram Seed Protectant Fungicide	Carboxin; Thiram.
000264–00951	264	Kodiak Concentrate Biological Fungicide	Bacillus subtilis GB03.
000264–00952	264	Kodiak HB Biological Fungicide	Bacillus subtilis GB03.
000264–00953	264	Kodiak A–T Fungicide	Bacillus subtilis GB03; Metalaxyl; Pentachloronitrobenzene.
000264–00969	264	Gustafson Allegiance 50WP	Metalaxyl.
000264–00970	264	Kodiak Flowable Biological Fungicide	Bacillus subtilis GB03.
000264–00974	264	Gustafson AG-Streptomycin	Streptomycin sulfate.
000264–00984	264	Titan FL	Carboxin; Clothianidin; Metalaxyl; Thiram.
000264–01013	264	Ipconazole Metalaxyl MD (S)	Ipconazole; Metalaxyl.
000264–01014	264	Gustafson Allegiance Dry Seed Protectant Fungicide	Metalaxyl.
000264–01015	264	Prevail Allegiance Terraclor Vitavax Fungicide	Carboxin; Metalaxyl; Pentachloronitrobenzene.
000264–01016	264	Stiletto Pak	Carboxin; Metalaxyl; Thiram.
000264–01019	264	Stiletto	Carboxin; Metalaxyl; Thiram.
000264–01035	264	Prosper T200 Insecticide and Fungicide Seed Treatment	Carboxin; Clothianidin; Metalaxyl; Trifloxystrobin.
000264–01076	264	Vortex 2000	Ipconazole; Metalaxyl.
000264–01079	264	Three-Way VAP	Clothianidin; Ipconazole; Metalaxyl.
000352–00702	352	Griffin Early Harvest PGR	Cytokinin; Gibberellic acid; Indole-3-butyric acid.
000464–00694	464	Ucarcide 150 Antimicrobial	Glutaraldehyde.
000464–00696	464	Ucarsan Sanitizer 4128	Glutaraldehyde.
000464–00712	464	Piror 842 Slimicide	Quaternary ammonium compounds; Glutaraldehyde.
000961–00283	961	Greenview Preen 'n Green	Trifluralin.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
000961–00390	961	Lebanon Lawn Fertilizer contains Confront and Team	Benfluralin; Clopyralid, triethanolamine; Triclopyr, triethylamine salt; Trifluralin.
000961–00411	961	Lebanon Permethrin 0.5 Lawn Insect Control with Fertilizer	Permethrin.
001381–00230	1381	IMID–TEBU–META	Imidacloprid; Metalaxyl; Tebuconazole.
001529–00032	1529	Nuosept 101 Preservative	4,4-Dimethyloxazolidine.
001529–00037	1529	Nuosept 166 Preservative	4,4-Dimethyloxazolidine...
001839–00047	1839	CD 4.5 Detergent/Disinfectant	Quaternary ammonium compounds.
001839–00064	1839	BTC 776–80%	Quaternary ammonium compounds.
001839–00066	1839	BTC 2565 Concentrate for the Manufacture of Algaecides	Quaternary ammonium compounds.
001839–00106	1839	10% BTC 2125M Powder Fabric Softener/Sanitizer.	Quaternary ammonium compounds.
001839–00110	1839	20% Active Powder Commercial Fabric Softener/Sanitizer	Quaternary ammonium compounds.
001839–00111	1839	5% Powdered Fabric Softener/Sanitizer	Quaternary ammonium compounds.
001839–00129	1839	BTC 99 Industrial Water Cooling Tower	Quaternary ammonium compounds.
001839–00132	1839	5% BTC 99 Swimming Pool Algaecide	Quaternary ammonium compounds.
001839–00133	1839	10% BTC 99 Swimming Pool Algaecide	Quaternary ammonium compounds.
001839–00134	1839	50% BTC 99 Swimming Pool Algaecide	Quaternary ammonium compounds.
001839–00139	1839	20% BTC 99 Industrial And/Or Commercial Recirculating Cooling Water.	Quaternary ammonium compounds.
001839–00144	1839	NP 5.5 HW (D&F) Detergent/Disinfectant	Quaternary ammonium compounds.
001839–00154	1839	Scented 10% BTC 2125M Disinfectant	Quaternary ammonium compounds.
001839–00177	1839	NonHard Water Neutral Disinfectant Cleaner	Quaternary ammonium compounds.
001839–00180	1839	25% BTC 99 Swimming Pool Algaecide	Quaternary ammonium compounds.
001839–00192	1839	BQ451–5 Biocide	Quaternary ammonium compounds.
001839–00193	1839	BQ1416–5 Biocide	Quaternary ammonium compounds.
001839–00194	1839	BQ361–5 Biocide	Quaternary ammonium compounds.
001839–00195	1839	BQ1416–8 Biocide	Quaternary ammonium compounds.
001839–00196	1839	BQ621–5 Biocide	Quaternary ammonium compounds.
001839–00197	1839	BEQ442–8 Biocide	Quaternary ammonium compounds.
001839–00198	1839	BEQ442–5 Biocide	Quaternary ammonium compounds.
001839–00199	1839	DAQ1010–5 Biocide	Quaternary ammonium compounds.
001839–00200	1839	Albemarle DAQ1010–8 Biocide	Quaternary ammonium compounds.
001839–00201	1839	Albemarle AC76–5 Biocide	Quaternary ammonium compounds.
001839–00202	1839	BQ451–8 Biocide	Quaternary ammonium compounds.
001839–00203	1839	Albemarle DAQ1010–5–W	Quaternary ammonium compounds.
001839–00204	1839	BQ451–5–WW Biocide	Quaternary ammonium compounds.
001839–00205	1839	AC76–5–PW Biocide	Quaternary ammonium compounds.
002693–00214	2693	Micron Extra P—Blue	Cuprous oxide; Tolylfluanid.
002693–00215	2693	Ultra P—Blue	Cuprous oxide; Tolylfluanid.
002792–00069	2792	Decco 270 Aerosol	Chlorpropham.
003008–00072	3008	Osmose Arsenic Acid 75%	Arsenic acid.
003862–00075	3862	Mint 7	Quaternary ammonium compounds.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
003862–00185	3862	Spur-Tex Disinfectant Cleaner-Deodorant	Quaternary ammonium compounds.
005813–00081	5813	CGW	Isopropyl alcohol.
007969–00248	7969	BAS 516 ST Seed Treatment Fungicide	Boscalid; Pyraclostrobin.
034704–01026	34704	First Choice Milsana Bioprotectant	Reynoutria sachalinensis.
035935–00030	35935	Glyphosate Technical	Glyphosate.
035935–00033	35935	Glyphosate Technical	Glyphosate.
035935–00034	35935	Glyphosate Technical (NUP–05068)	Glyphosate.
035935–00037	35935	Imazapyr Technical	Imazapyr.
035935–00076	35935	Prodiamine Technical	Prodiamine.
039967–00026	39967	Preventol WB Plus	o-Phenylphenol, sodium salt; Sodium p-chloro-m-cresolate; Sodium pyrithione.
039967–00036	39967	Metasol CB 225–AD	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile.
039967–00037	39967	Metasol CB 225–LC	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile.
039967–00040	39967	Metasol CB–220	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile.
039967–00049	39967	Preventol A5–S	Tolylfluanid.
057787–00029	57787	Proteam Power Magic Superoxidizer	Boron sodium oxide (B4Na2O7), pentahydrate; Calcium hypochlorite.
062719–00470	62719	Halofenozide Technical Insecticide	Halofenozide.
062719–00471	62719	Mach 2 2SC	Halofenozide.
062719–00472	62719	Mach 2 2.5% Granular Turf Insecticide	Halofenozide.
062719–00473	62719	Mach 2 1.5G Specialty Insecticide	Halofenozide.
062719–00474	62719	Mach 2 Plus Fertilizer 0.86% A.I.	Halofenozide.
062719–00475	62719	Mach 2* Plus Fertilizer 0.57% A.I.	Halofenozide.
062719–00476	62719	Mach 2 Manufacturing Use Concentrate	Halofenozide.
062719–00489	62719	Mach 2 Plus Fertilizer (1% A.I.)	Halofenozide.
062719–00490	62719	Mach 2 Plus Fertilizer (1.33% A.I.)	Halofenozide.
071368–00070	71368	Bromoxynil Technical 94%	Bromoxynil.
071368–00071	71368	Bromox Octanoic Acid Technical	Bromoxynil octanoate.
AL–98–0004	59639	Select Herbicide	Clethodim.
AR–08–0003	279	Brigade 2EC Insecticide/Miticide	Bifenthrin.
AR–08–0017	100	Dual Magnum	S-Metolachlor.
AR–13–0001	241	Raptor Herbicide	Imazamox.
AR–96–0005	59639	Cobra Herbicide	Lactofen.
AZ–07–0012	279	Brigade 2EC Insecticide/Miticide	Bifenthrin.
AZ–08–0004	71512	Beleaf 50SG Insecticide	Flonicamid.
CA–00–0013	264	Rovral 4 Flowable Fungicide	Iprodione.
CA–01–0029	59639	Esteem Ant Bait	Pyriproxyfen.
CA–02–0014	264	Rovral 4 Flowable Fungicide	Iprodione.
CA–03–0010	50534	Daconil Weather Stik Flowable Fungicide	Chlorothalonil.
CA–06–0028	352	DuPont Vydate C–LV Insecticide/Nematicide	Oxamyl.
CA–94–0023	59639	Danitol 2.4 EC Spray (Insecticide-Miticide)	Fenpropathrin.
CA–96–0025	34704	Prometryne 4L Herbicide	Prometryn.
CO–01–0007	59639	Distance Insect Growth Regulator	Pyriproxyfen.
CO–11–0001	81880	GWN–3061	Halosulfuron-methyl.
CO–94–0006	400	Comite II	Propargite.
CT–03–0002	59639	Valor Herbicide	Flumioxazin.
FL–00–0002	59639	Knack Insect Growth Regulator	Pyriproxyfen.
FL–12–0003	100	Actigard 50WG	Acibenzolar-s-methyl.
FL–89–0032	59639	Cobra Herbicide	Lactofen.
FL–94–0011	59639	Tame 2.4 EC Spray	Fenpropathrin.
GA–03–0001	352	Avaunt Insecticide	Indoxacarb.
GA–98–0006	59639	Select Herbicide	Clethodim.
HI–97–0003	34704	Clean Crop Carbaryl 4L	Carbaryl.
ID–00–0018	100	Wakil XL	Cymoxanil; Fludioxonil; Metalaxyl-M.
ID–06–0019	5481	Orthene 97	Acephate.
ID–09–0017	100	Scholar SC	Fludioxonil.
ID–93–0015	264	Rovral 4 Flowable Fungicide	Iprodione.
ID–94–0001	264	Rovral 4 Flowable Fungicide	Iprodione.
ID–96–0015	5481	Assert Herbicide	Imazamethabenz.
IL–07–0004	59639	Safari 20 SG Insecticide	Dinotefuran.
IN–07–0002	59639	Safari 20 SG Insecticide	Dinotefuran.
KY–11–0034	400	Terrazole 4EC	Etridiazole.
LA–03–0003	352	Velpar L Herbicide	Hexazinone.
LA–03–0004	352	Velpar DF Herbicide	Hexazinone.
LA–05–0009	66222	White Guard 90 SP Cotton Insecticide	Acephate.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
LA–06–0001	34704	Permethrin	Permethrin.
LA–08–0002	7969	Termidor SC Termiciticide/Insecticide	Fipronil.
LA–08–0003	7969	Termidor 80 WG Termiciticide/Insecticide	Fipronil.
LA–12–0011	100	Gramoxone Inteon	Paraquat dichloride.
LA–12–0017	10163	Savey Technical	Hexythiazox.
LA–12–0018	7969	Termidor SC Termiticide/Insecticide	Fipronil.
MA–05–0002	100	Abound Flowable Fungicide	Azoxystrobin.
ME–08–0001	10163	Nexter	Pyridaben.
MI–07–0005	59639	Safari 20 SG Insecticide	Dinotefuran.
MI–07–0006	100	Cannonball	Fludioxonil.
MI–10–0003	100	Scholar SC	Fludioxonil.
MN–09–0004	100	Dual Magnum	S-Metolachlor.
MN–09–0006	100	Reglone Dessicant	Diquat dibromide.
MN–11–0003	81880	GWN–3061	Halosulfuron-methyl.
MO–05–0008	59639	Valor SX Herbicide	Flumioxazin.
MO–05–0009	59639	Valor SX Herbicide	Flumioxazin.
MO–05–0010	59639	Valor SX Herbicide	Flumioxazin.
MO–98–0001	59639	Resource Herbicide	Flumiclorac.
MS–02–0023	241	Phantom Termiticide-Insecticide	Chlorfenapyr.
MS–05–0010	66222	Acephate 90 SP Cotton Insecticide	Acephate.
MS–08–0005	100	Dual Magnum	S-Metolachlor.
MS–81–0014	264	Monitor 4	Methamidophos.
MS–81–0055	264	Monitor 4	Methamidophos.
MS–96–0001	59639	Cobra Herbicide	Lactofen.
NC–00–0002	59639	Select Herbicide	Clethodim.
NC–03–0002	352	DuPont Staple Herbicide	Pyrithiobac-sodium.
NC–03–0007	59639	Velocity Herbicide	Bispyribac-sodium.
NC–06–0002	100	Dual Magnum Herbicide	S-Metolachlor.
NC–87–0005	100	Reflex 2LC Herbicide	Sodium salt of fomesafen.
ND–03–0012	352	DuPont Asana XL Insecticide	Esfenvalerate.
ND–07–0004	34704	Makaze Herbicide	Glyphosate-isopropylammonium.
ND–11–0001	81880	GWN–3061	Halosulfuron-methyl.
NE–11–0002	81880	GWN–3061	Halosulfuron-methyl.
NJ–05–0002	100	Abound Flowable Fungicide	Azoxystrobin.
NJ–08–0003	59639	Safari 20 SG Insecticide	Dinotefuran.
NV–09–0002	5481	Zeal Miticide 1	Etoxazole.
OH–01–0003	59639	Valor WDG Herbicide	Flumioxazin.
OH–02–0003	59639	Valor WDG Herbicide	Flumioxazin.
OH–07–0002	59639	Safari 20 SG Insecticide	Dinotefuran.
OH–11–0006	400	Terrazole 4EC	Etridiazole.
OK–97–0001	352	DuPont Staple Herbicide	Pyrithiobac-sodium.
OR–01–0028	66222	Galigan 2E	Oxyfluorfen.
OR–03–0034	66222	Galigan 2E	Oxyfluorfen.
OR–06–0010	264	Mocap EC Nematicide—Insecticide	Ethoprop.
OR–06–0024	264	Mocap EC Nematicide—Insecticide	Ethoprop.
OR–06–0027	59639	Select Max Herbicide with Inside Technology	Clethodim.
OR–07–0027	34704	Stealth Herbicide	Pendimethalin.
OR–08–0027	264	Axiom DF Herbicide	Flufenacet; Metribuzin.
OR–09–0003	264	Mocap EC Nematicide—Insecticide	Ethoprop.
OR–09–0021	100	Scholar SC	Fludioxonil.
OR–13–0009	100	Palisade EC	Trinexapac-ethyl.
PA–07–0001	352	DuPont Avaunt Insecticide	Indoxacarb.
SC–88–0001	59639	Orthene 75 S Soluble Powder	Acephate.
SC–98–0002	59639	Select Herbicide	Clethodim.
TN–05–0005	352	DuPont Staple Herbicide	Pyrithiobac-sodium.
TN–08–0013	59639	Safari 20 SG Insecticide	Dinotefuran.
TN–11–0003	400	Terrazole 4EC	Etridiazole.
TX–00–0009	59639	Distance Insect Growth Regulator	Pyriproxyfen.
TX–95–0003	5481	Payload 15 Granular	Acephate.
TX–96–0001	5481	Cobra Herbicide	Lactofen.
TX–96–0016	352	Harmony Extra Herbicide	Thifensulfuron; Tribenuron-methyl.
TX–99–0010	241	Arsenal Herbicide	Imazapyr, isopropylamine salt.
UT–98–0003	5481	Orthene Turf, Tree & Ornamental Spray WSP	Acephate.
VA–08–0002	279	Brigade 2EC Insecticide/Miticide	Bifenthrin.
WA–00–0037	100	Wakil XL	Cymoxanil; Fludioxonil; Metalaxyl-M.
WA–06–0016	59639	Select Max Herbicide with Inside Technology	Clethodim.
WA–08–0011	66330	Evito 480 SC Fungicide	Fluoxastrobin.
WA–10–0007	100	Graduate SC	Fludioxonil.
WA–98–0005	34704	Prometryne 4L Herbicide	Prometryn.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
WI–02–0012	59639	Valor WDG Herbicide	Flumioxazin.
WI–07–0001	100	Dual Magnum	S-Metolachlor.
WI–07–0006	50534	Bravo Ultrex	Chlorothalonil.
WI–07–0007	50534	Bravo Weather Stik	Chlorothalonil.
WI–07–0008	50534	Bravo ZN	Chlorothalonil.
WI–08–0001	59639	Safari 20 SG Insecticide	Dinotefuran.
WI–10–0004	50534	Bravo Weather Stik	Chlorothalonil.
WI–12–0001	100	Dual Magnum Herbicide	S-Metolachlor

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300.
241	BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
264	Bayer CropScience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
279	FMC Corp. Agricultural Products Group, 1735 Market St, Rm 1978, Philadelphia, PA 19103.
352	E.I. Du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898–0001.
400	Chemtura Corp., 199 Benson Rd., Middlebury, CT 06749.
464	The Dow Chemical Company, 1500 East Lake Cook Road, Buffalo Grove, IL 60089.
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
1529	International Specialty Products, An Ashland Inc. Business, 1361 Alps Road, Wayne, NJ 07470.
1839	Stepan Company, 22 W. Frontage Road, Northfield, IL 60093.
2693	International Paint LLC, 2270 Morris Avenue, Union, NJ 07083.
2792	Decco US Post-Harvest, Inc., 1713 South California Avenue, Monrovia, CA 91016–0120.
3008	Osmose Inc., 980 Ellicott Street, Buffalo, NY 14209.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company name and address
3862	ABC Compounding Co., Inc., P.O. Box 16247, Atlanta, GA 30321–0247.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
5813	The Clorox Co., C/O PS&RC, P.O. Box 493, Pleasanton, CA 94566–0803.
7969	BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
10163	Gowan Co., P.O. Box 5569, Yuma, AZ 85366–8844.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
35935	Nufarm Limited, 4020 Aerial Center Pkwy., Suite 103, Morrisville, NC 27560.
39967	LANXESS Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112.
50534	GB Biosciences Corp., P.O. Box 18300, Greensboro, NC 27419–5458.
57787	Haviland Consumer Products, Inc., D/B/A Haviland Consumer Products, 421 Ann Street, NW, Grand Rapids, MI 49504–2075.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
62719	Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
71368	NuFarm, Inc., 4020 Aerial Center Pkwy., Suite 103, Morrisville, NC 27560.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company name and address
71512	ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.
81880	Canyon Group LLC, C/O Gowan Company, 370 S. Main Street, Yuma, AZ 85364.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products

have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products until January 15, 2015. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 16, 2014.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2014–19449 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9915–13–Region 10]

Re-Proposal of an NPDES General Permit for Oil and Gas Geotechnical Surveying and Related Activities in Federal Waters of the Beaufort and Chukchi Seas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of re-proposal of general permit.

SUMMARY: Environmental Protection Agency Region 10 (EPA) re-proposes a National Pollutant Discharge Elimination System (NPDES) General Permit for Oil and Gas Geotechnical Surveying and Related Activities in Federal Waters of the Beaufort and Chukchi Seas (Permit No. AKG–28–4300). On November 22, 2013, EPA released a draft NPDES general permit for oil and gas geotechnical surveys and related activities in federal waters of the Beaufort and Chukchi Seas for public review. The public comment period closed on February 19, 2014. Based on the comments received, EPA has made revisions to the draft Geotechnical General Permit and re-proposes a revised draft for public review accompanied by a Fact Sheet describing the revisions and a revised Ocean Discharge Criteria Evaluation.

EPA seeks public comment only on the following proposed changes: (1) Inclusion of seasonal prohibitions on wastewater discharges specific to the 3–25 mile lease deferral area in the Chukchi Sea; (2) Clarification of drilling fluid testing requirements (Discharge 001); (3) Clarification of Environmental Monitoring Program requirements and inclusion of language regarding pre-existing baseline data; (4) Revision of sampling frequencies for fecal coliform and total residual chlorine (Sanitary Wastewater, Discharge 003); and (5) Clarification of Notice of Intent submission requirements.

As proposed, the Geotechnical General Permit authorizes twelve types of discharges from facilities engaged in oil and gas geotechnical surveys to evaluate the subsurface characteristics of the seafloor and related activities in federal waters of the Beaufort and Chukchi Seas. Geotechnical borings are collected to assess the structural properties of subsurface soil conditions for potential placement of oil and gas installations, which may include production and drilling platforms, ice islands, anchor structures for floating exploration drilling vessels, and potential buried pipeline corridors. Geotechnical surveys result in a disturbance of the seafloor and produce discharges consisting of soil, rock and cuttings materials, in addition to facility-specific waste streams authorized under this general permit. Geotechnical related activities also result in a disturbance of the seafloor and produce similar discharges. These activities may include feasibility testing of equipment that disturbs the seafloor, and testing and evaluation of trenching technologies.

DATES: *Comments.* The public comment period for the re-proposed Geotechnical General Permit will be from the date of publication of this document until September 15, 2014. Comments must be received or post-marked by no later than midnight Pacific Standard Time on September 15, 2014. EPA will only consider comments on the re-proposed permit provisions. Comments submitted previously on the initial draft Geotechnical General Permit need not be resubmitted; comments addressing permit provisions or issues beyond the scope of this re-proposal will not be considered.

ADDRESSES: EPA will consider comments on the re-proposed permit provisions before making its final decision. You may submit comments by any of the following methods.

Mail: Send paper comments to Erin Seyfried, Office of Water and Watersheds, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140.

Email: Send electronic comments to *R10geotechpermit@epa.gov.*

Fax: Fax comments to the attention of Erin Seyfried at (206) 553–0165.

Hand Delivery/Courier: Deliver comments to Erin Seyfried, Office of Water and Watersheds, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140. Call (206) 553–0523 before delivery to verify business hours.

Viewing and/or Obtaining Copies of Documents. A copy of the draft Geotechnical General Permit and the Fact Sheet, which explains the proposal in detail, may be obtained by contacting EPA at 1 (800) 424–4372. Copies of the documents are also available for viewing and downloading at: *http://yosemite.epa.gov/r10/water.nsf/npdes+permits/DraftPermitsAK http://yosemite.epa.gov/r10/water.nsf/npdes+permits/arctic-gp.* See **SUPPLEMENTARY INFORMATION** for other document viewing locations.

FOR FURTHER INFORMATION CONTACT: Erin Seyfried, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140, (206) 553–1448, *seyfried.erin@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 22, 2013, EPA issued a draft Geotechnical General Permit for public review, and established a comment deadline of January 27, 2014 (78 FR 70042). In response to requests for an extension of the deadline from the Alaska Eskimo Whaling Commission and the Inupiat Community of the Arctic Slope, EPA extended the comment period for an additional 23 days, from January 27, 2014 to February 19, 2014 (79 FR 4344).

Based on the comments received during the public review of the draft Geotechnical General Permit, EPA determined that certain permit

provisions warranted further consideration and notified interested parties of this determination on March 21, 2014. To further that process, EPA met with several commenters to clarify certain technical issues and obtain additional information. The public comments and subsequent information resulted in EPA revising several permit provisions, as described further in the Fact Sheet.

Document Viewing Locations. The re-proposed Geotechnical General Permit and Fact Sheet may also be viewed at the following locations:

(1) EPA Region 10 Library, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101; (206) 553–1289.

(2) EPA Region 10, Alaska Operations Office, 222 W. 7th Avenue, #19, Room 537, Anchorage, AK 99513; (907) 271–5083.

(3) Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503; (907) 343–2975.

(4) North Slope Borough School District Library/Media Center, Pouch 169, 829 Aivak Street, Barrow, AK 99723; (907) 852–5311.

EPA's current administrative record for the draft Geotechnical General Permit is available for review at the EPA Region 10 Office, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101, between 9:00 a.m. and 4:00 p.m., Monday through Friday. Contact Erin Seyfried at *seyfried.erin@epa.gov* or (206) 553–1448.

Oil Spill Requirements. Section 311 of the Act, 33 U.S.C. 1321, prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges authorized under the Geotechnical General Permit are excluded from the provisions of CWA section 311, 33 U.S.C. 1321. However, the Geotechnical General Permit will not preclude the institution of legal action, or relieve the permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials, which are covered by section 311.

Endangered Species Act. Section 7 of the Endangered Species Act, 16 U.S.C. 1531–1544, requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. EPA analyzed the discharges proposed to be authorized by the draft Geotechnical General Permit, and their potential to adversely affect any of the threatened or endangered species or their designated critical habitat areas in the vicinity of the discharges in a Biological Evaluation dated December 2013. EPA completed a supplemental analysis evaluating the effects of interrelated and interdependent actions on the Pacific walrus on February 11, 2014. On January 31 and March 19, 2014, EPA received letters of concurrence from the USFWS and NMFS, respectively, agreeing with EPA's determinations of effects. On March 13, 2014, in response to EPA's request for a conference on the Pacific walrus, the USFWS confirmed that the proposed permit action would not jeopardize the continued existence of this species. EPA has reviewed the re-proposed draft permit and determined that the proposed changes would not alter the original conclusions that the discharges may affect, but are not likely to adversely affect listed, proposed, and candidate species or their designated critical habitat areas. The Fact Sheet, the re-proposed draft Geotechnical General Permit, and the revised Ocean Discharge Criteria Evaluation will be sent to NMFS and the USFWS for review during the public comment period.

Essential Fish Habitat. The Magnuson-Stevens Fishery Conservation and Management Act requires EPA to consult with NMFS when a proposed permit action has the potential to adversely affect Essential Fish Habitat (EFH). EPA's EFH assessment is included as Appendix A to the BE. The EFH assessment concluded that the discharges authorized by the draft Geotechnical General Permit will not adversely affect EFH. EPA has also concluded that the re-proposed permit changes will not adversely affect EFH.

Coastal Zone Management Act. As of July 1, 2011, there is no longer a Coastal Zone Management Act (CZMA) program in Alaska. Consequently, federal agencies are no longer required to provide the State of Alaska with CZMA consistency determinations.

Executive Order 12866. The Office of Management and Budget exempts this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Paperwork Reduction Act. EPA has reviewed the requirements imposed on regulated facilities in the Geotechnical General Permit and finds them consistent with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., a federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the FRA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that the Geotechnical General Permit will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the regulated companies are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5023 et seq. (February 9, 1984). These facilities are classified as Major Group 13—Oil as Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342. I hereby provide public notice of the revised draft Geotechnical General Permit in accordance with 40 CFR 124.10.

Dated: August 5, 2014.

Christine Psyk,

Associate Director, Office of Water and Watersheds, Region 10.

[FR Doc. 2014–19137 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Reappointment of FASAB Members

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that Dr. Michael Granof has been reappointed to a five-year term as a member of the Federal Accounting Standards Advisory Board (FASAB) beginning July 1, 2014.

FASAB also announces that Mr. D. Scott Showalter has been reappointed to a five-year term as a member of the Federal Accounting Standards Advisory Board beginning July 1, 2014.

For Further Information Regarding Mr. Granof or Mr. Showalter, Contact: Ms. Wendy M. Payne, Executive Director, 441 G St., NW., Mail Stop 6H20, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: August 11, 2014.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2014–19296 Filed 8–14–14; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 14, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal government.

Number of Respondents and Responses: 253,320 respondents and 253,320 responses.

Estimated Time per Response: 0.5–1.25 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, every ten year reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 221,955 hours.

Total Annual Cost: $71,306,250.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission use an FRN.

On June 2, 2014, the Commission released a Second Report and Order FCC 14–62, WT Docket Nos. 08–166 and 08–167 and ET Docket No. 10–24, ''Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band.'' This order expanded eligibility for low power auxiliary station licenses under Part 74 by adding two new categories of eligible entities: ''large venue owner or operator'' and ''professional sound company.'' To accommodate these changes we are revising Schedule H of Form 601 to add two new categories of eligible entities: ''large venue owner or operator'' and ''professional sound company.'' In order to be eligible for a Part 74 license, a large venue owner or operator and a professional sound company must routinely use 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions. We also increased the number of respondents by 200 responses to include these new applicants.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to revise Schedule H accordingly and increase the total number of respondents by 200 and the number of responses by 200.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–19291 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as

required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted 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 notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''**SUPPLEMENTARY INFORMATION**'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 10–51 and 03–123; FCC 13–82.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institution; Federal Government.

Number of Respondents and Responses: 39 respondents; 9,876,603 responses.

Estimated Time per Response: .005 hours to 80 hours.

Frequency of Response: Annual, on-occasion, on-going, one-time, and quarterly reporting requirements; Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is Sec. 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 486,417 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: This information collection affects individuals or households. However, access to personally identifiable information (PII) is limited to the third party vendor and the Commission only pursuant to the requirements of the Privacy Act of 1974, as amended.

Privacy Impact Assessment: This information collection affects individuals or households. The Commission is not collecting personally identifiable information (PII) for the purpose of populating in the database, the database is made available and accessible by the Commission. Although TRS users are required to provide their personal identifiable information to register for using TRS service, such information is available only to a third-party independent vendor selected by the Commission's Managing Director and the Commission. The third party vendor and the Commission are required to maintain all registered information, including personal information, in the registration database confidential in accordance to the directives under contract between the third party vendor and the Commission's Managing Director.

The FCC is completing the requirements for a new system of records notice (SORN), FCC/CGB–4, ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD),'' which will cover the personally identifiable information (PII) that may be collected, maintained, used, and stored, and disposed of when obsolete, and which are part of the information associated with these information collection requirements, *i.e.,* the new SORN will make this information collection comply with all requirements of the Privacy Act of 1974, as amended.

Needs and Uses: On June 10, 2013, the Commission released the VRS Reform Order, FCC 13–82, published at 78 FR 40582, July 5, 2013, adopting further measures to improve the structure, efficiency, and quality of the VRS program, reducing the noted inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. In the Order, the Commission takes the following actions by: (1) Setting up an arrangement with the National Science Foundation (NSF) to enable research designed to further the Commission's multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS; (2) establishing a pilot iTRS National Outreach Program (iTRS–NOP) by selecting one or more independent iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide under the Commission's (or the TRS Fund administrator's) supervision; (3) promoting the development and adoption of voluntary, consensus interoperability and portability standards, and facilitate compliance with those standards by directing the Managing Director to contract for the development and deployment of a VRS access technology reference platform; (4) establishing a central TRS user registration database (TRS–URD) which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention; and (5) selecting a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay

interpretation service providers to compete without having to build their own video communication service platforms.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–19290 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 14, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: FCC Frequent Visitor Building Identification (ID) Badge Database, FCC Form 210.

Form Number: FCC Form 210.

Type of Review: New information collection.

Respondents: Business or other for-profit; Institutions; State, local, and tribal Governments; and Individuals. (Will Federal employees from other agencies need to participate in this program, or will there be some other arrangements for them as ''frequent visitors?'')

Number of Respondents and Responses: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 40 hours.

Frequency of Response: One time; and on occasion reporting requirements (if an individual has to have another background investigation done after the initial one is done later, e.g., if their situation requires a new background investigation/screening).

Obligation to Respond: Required to obtain or retain benefits (the background investigation is required to obtain the ''FCC Frequent Visitor Building ID Badge''). Statutory authority for this collection of information is contained in 5 U.S.C. 301; 6 U.S.C. 202; 8 U.S.C. 1103, 1158, 1201, 1324, 1357, 1360, 1365a, 1365b, 1372, 1379, 1732; *Federal Information Security Act* (Pub. L. 104–106, sec. 5113); *Electronic Government Act* (Pub. L. 104–347, sec. 203); and *Federal Property and Administrative Act of 1949,* as amended. (these are the cites from the system of records notice: FCC/OMD–30 ''FCC Visitors Database'')

Total Annual Burden: 40,000 hours. (1,000 background investigations @40 hours/investigation)

Annual Cost Burden: $500,000. (1,000 background investigations @$500/investigation)

Privacy Act Impact Assessment: The FCC Visitors Database PIA is posted at: *http://www.fcc.gov/encyclopedia/privacy-act-information#pia.* The Commission intends to update the PIA upon OMB's approval of this information collection and the system of records notice.

Nature and Extent of Confidentiality: The information that the FCC will collect from individuals who choose to participate in the Frequent Visitors Program is covered by a system of records notice (SORN), FCC/OMD–30, ''FCC Visitors Database,'' at: *http://www.fcc.gov/encyclopedia/privacy-act-information#systems.* The FCC is in the process of altering this SORN to cover this additional information that individuals will be required to provide to the Commission to obtain their FCC Frequent Visitors Identification Badge. In addition, respondents may also request confidentiality protection for other non-PII that may be collected as part of this information collection.

Needs and Uses: The FCC (and all Federal agencies) have a minimal, standard security screening process that all individuals (who are not FCC employees or contractors) must go through before they may receive a ''visitor's pass'' that allows them to enter the Commission's headquarters and facilities. Individuals who are frequent and regular visitors to the Commission have requested that the FCC to create a background investigation and screening process that provides them with a ''FCC Frequent Visitor Building Identification (ID) Badge'' that will allow them to enter the Commission headquarters and facilities without having to go through the standard visitor's security screening process each time that they come to the FCC headquarters and facilities for Commission meetings, conferences, and other functions and activities. The FCC Frequent Visitors Building ID Badge system will also allow these individuals, as ''frequent and regular visitors,'' to have greater access to the FCC facilities, *i.e.,* they will not be required to have a FCC employee accompany them in their movements in the FCC's buildings and facilities.

The FCC is expanding the existing FCC Visitors Database system to house the additional information (including PII), which these individual will provide who will undergo a background investigation and a security screening similar to the Federal background and security screening process that all FCC employees must undergo when they are hired to work at the FCC headquarters and facilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–19294 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one altered Privacy Act system of records; revision of four routine uses; addition of two new routine uses; and deletion of one routine use.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended (Privacy Act), the FCC proposes to change the name and alter one system of records, FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'' (formerly FCC/CGB–1, ''Informal Complaints and Inquiries''). The FCC will alter the categories of individuals; the categories of records; the authority for maintenance of the system; the purposes for collecting the information; four routine uses: (3), (4), (7) and (8) (add new routine uses: (2) and (5), and delete one routine use: (4)); the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; the system manager and address; the notification, record access, and contesting record procedures; and make various other minor edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974,* as amended.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before September 15, 2014. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before September 24, 2014. The proposed altered system of records will become effective on September 24, 2014 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed alteration of one system of records maintained by the FCC, revision of four routine uses: (3), (4), (7), and (8), addition of two new routine uses (2) and (5), and deletion of one routine use (4). The FCC previously gave complete notice of the system of records (FCC/CGB–1, ''Informal Complaints and Inquiries'') covered under this Notice by publication in the **Federal Register** on December 15, 2009 (74 FR66356). This notice is a summary of the more detailed information about the proposed altered system of records, which may be obtained or viewed under the contact and information at the location given above in the **ADDRESSES** section. The purposes for altering FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'' (formerly FCC/CGB–1, ''Informal Complaints and Inquiries'') are to change the name of the system to FCC/GCB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' to reflect the changes to the system's contents; to revise the categories of individuals; to revise the categories of records; to revise the authority for maintenance of the system; to revise the purposes for which the information is maintained; to revise routine uses (3) (formerly (2)), (4) (formerly (3))), (7) (formerly (6)), and (8) (formerly (7)); to add new routine uses (2) and (5); to delete one routine use (4); to revise the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; to revise the system manager and address; to revise the notification, records access, and contesting records procedures; and to make other edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974,* as amended (5 U.S.C. 552a), and the regulations and requirements of the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA).

The FCC will achieve these purposes by altering this system of records with these changes:

Revision of the language regarding the Categories of Individuals Covered by the System, for clarity and to note that:

The categories of individuals in the system include individuals, groups, and other entities who make or have made informal complaints, inquiries, or requests for dispute assistance on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act;

Revision of the language in the Categories of Records in the System, for clarity and to note that:

The categories of records in this system include both computerized information contained in a database and paper copies of inquiries, requests for dispute assistance, informal complaints, and related supporting information made by individuals, groups, or other entities; and company replies to complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries.

The categories of records may also include submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal at *www.fcc.gov;*

Revision of the Authority for Maintenance of the System to add several rule sections, so that the authorities include:

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 710, 713, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 610, 613, 617, 618, and 619; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d; and 47 CFR 0.111, 0.141, 1.711 *et seq.,* 14.30 *et seq.,* 20.19, 64.604, 68.414 *et seq.,* and 79.1 *et seq.*

Revision of the language regarding the Purpose(s) for which the information in the system is maintained, for clarity and to note that:

The records in this system are used by Commission personnel to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. Records in this system are available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or email address.

Revision of the language in Routine Use (3) ''FCC Enforcement Actions'' to note that:

When an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications

providers, broadcasters, multi-channel video programming distributors, voice-over-internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. When an order or other Commission-issued document that includes consideration of an informal complaint about accessibility for individuals with disabilities filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) is entered or released by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint;

Revision of the language in Routine Use (4) ''Law Enforcement and Investigation'' to note that:

Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, Tribal, or local agency either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

Revision of the language in Routine Use (7) ''Congressional Inquiries'' to note that:

Records on an individual in this system may be disclosed when requested by a congressional office in response to an inquiry by an individual made to the congressional office for the individual's own records;

Revision of the language in Routine Use (8) ''Government-wide Program Management and Oversight'' to note that:

When requested by the General Services Administration (GSA), the National Archives and Records Administration (NARA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

Addition of new Routine Use (2) ''Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities'' to note that:

When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended;

Deletion of Routine Use (4) and its replacement with new Routine Use (5) ''Adjudication and Litigation'' to note that:

Where by careful review, the Commission determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Commission to be for a purpose that is compatible with the purpose for which the Commission collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Commission or any component thereof; or (b) any employee of the Commission in his or her official capacity; or (c) any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

Revision of the language regarding the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System, for clarity and to note that:

Storage:

The Consumer and Governmental Affairs Bureau staff logs consumer informal complaints, inquiries, and requests for dispute assistance that it receives into its Complaint and Inquiry Management System (CIMS), Consolidated Complaint Management System (CCMS), and other electronic databases and network databases not specifically named here that are used to store consumer informal complaints and inquiries, including requests for dispute assistance. Each request for dispute assistance and informal complaint submission is automatically assigned a file identification number for future reference when the case is entered into one of the databases. This identification number tracks consumer submissions and assists with identification of duplicate filings, which occur when consumers file multiple submissions. Confidential paper submissions are moved to a locked storage room for safekeeping. All records are kept in accordance with the agency records control schedule approved by NARA.

Retrievability:

Information in this system, including, but not limited to records, files, and data, may be retrieved by the individual's personal identifiers (such as the complainant's name, address, telephone number, fax number, and/or email address), entity name, program name, date received and date closed, problem description field, and/or call sign.

Safeguards:

Electronic records that emanate from these informal complaint, inquiry submissions, and requests for dispute assistance are maintained in CIMS, CCMS, or other electronic and network computer databases not specifically named here, which are secured through controlled access and passwords restricted to a limited number of FCC employees or contractors working on informal complaints, inquiries, and requests for dispute assistance. In addition, as an added security measure, the staff in the Consumer and Governmental Affairs Bureau, Enforcement Bureau, and other FCC bureaus and offices who are assigned responsibility for resolution of these records in CIMS are only allowed access to these records via a ''license'' that also tracks their use of the records. Confidential paper submissions are moved to a locked storage room for safekeeping.

Retention and Disposal:

The information in this system is limited to electronic data, paper files,

and audio files, such as telephone call records. The information is retained at the FCC and then destroyed in accordance with the agency records control schedule N1–173–07–1, approved by the National Archives and Records Administration (NARA), which generally requires that source records are destroyed three years after data are entered into the system, and records in the master file are destroyed three years after the case is closed. Revision of the language regarding the System Managers and Address of the system, for clarity and to note that individuals seeking information about themselves in this system should: Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

Revision of the Notification, Record Access, and Contesting Record Procedures for the system, for clarity and to note that individuals seeking information about themselves in this system should:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. An individual requesting access must follow FCC Privacy Act regulations regarding verification of identity and amendment of records. *See* 47 CFR 0.554–0.557.

Revision or modification of other data elements in CGB–1, as required, to make editorial changes to update, simply, or clarify, as necessary, this system of records notice (SORN) to make various other minor edits and revisions as necessary to comply with the requirements of the *Privacy Act of 1974,* as amended.

This notice meets the requirement of documenting the changes to the systems of records that the FCC maintains, and provides the public, Congress, and OMB an opportunity to comment.

FCC/CGB–1

SYSTEM NAME:

Informal Complaints, Inquiries, and Requests for Dispute Assistance

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include individuals, groups, and other entities who make or have made informal complaints, inquiries, or requests for dispute assistance on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include both computerized information contained in a database and paper copies of inquiries, requests for dispute assistance, informal complaints, and related supporting information made by individuals, groups, or other entities; and company replies to complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries. The categories of records may also include submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal at *www.fcc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 710, 713, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 610, 613, 617, 618, and 619; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d; and 47 CFR 0.111, 0.141, 1.711 *et seq.,* 14.30 *et seq.,* 20.19, 64.604, 68.414 *et seq.,* and 79.1 *et seq..*

PURPOSES:

The records in this system are used by Commission personnel to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. Records in this system are available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or email address.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Informal Complaints—When a record in this system involves an informal complaint filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-internet-protocol providers, and/or wireless providers, the complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

2. Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities—When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

3. FCC Enforcement Actions—When an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. When an order or other Commission-issued document that includes consideration of an informal complaint about accessibility for individuals with disabilities filed against a company (including telecommunications and advanced communications service providers and equipment manufacturers; video programming owners, providers, and distributors, including broadcasters and multichannel video programming distributors; and manufacturers of apparatus used to receive, play back, or record video programming) is entered or released by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from

public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

4. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, Tribal, or local agency either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency.

5. Adjudication and Litigation—Where by careful review, the Commission determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Commission to be for a purpose that is compatible with the purpose for which the Commission collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Commission or any component thereof; or (b) any employee of the Commission in his or her official capacity; or (c) any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation.

6. Department of Justice—A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) the Commission determines that the disclosure is relevant or necessary to the litigation.

7. Congressional Inquiries—When requested by a congressional office in response to an inquiry by an individual made to the congressional office for the individual's own records.

8. Government-wide Program Management and Oversight—When requested by the General Services Administration (GSA), the National Archives and Records Administration (NARA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act.

9. Breach of Federal Data—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission 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 Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Consumer and Governmental Affairs Bureau staff logs consumer informal complaints, inquiries, and requests for dispute assistance that it receives into its Complaint and Inquiry Management System (CIMS), Consolidated Complaint Management System (CCMS), and other electronic databases and network databases not specifically named here that are used to store consumer informal complaints and inquiries, including requests for dispute assistance. Each request for dispute assistance and informal complaint submission is automatically assigned a file identification number for future reference when the case is entered into one of the databases. This identification number tracks consumer submissions and assists with identification of duplicate filings, which occur when consumers file multiple submissions. Confidential paper submissions are moved to a locked storage room for safekeeping. All records are kept in accordance with the agency records control schedule approved by NARA.

RETRIEVABILITY:

Information in this system, including, but not limited to records, files, and data, may be retrieved by the individual's personal identifiers (such as the complainant's name, address, telephone number, fax number, and/or email address), entity name, program name, date received and date closed, problem description field, and/or call sign.

SAFEGUARDS:

Electronic records that emanate from these informal complaint, inquiry submissions, and requests for dispute assistance are maintained in CIMS, CCMS, or other electronic and network computer databases not specifically named here, which are secured through controlled access and passwords restricted to a limited number of FCC employees or contractors working on informal complaints, inquiries, and requests for dispute assistance. These various safeguards comply with the FCC's IT security and privacy protocols. In addition, as an added security measure, the staff in the Consumer and Governmental Affairs Bureau, Enforcement Bureau, and other FCC bureaus and offices who are assigned responsibility for resolution of these records in CIMS are only allowed access to these records via a ''license'' that also tracks their use of the records. Confidential paper submissions are moved to a locked storage room for safekeeping.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic data, paper files, and audio files, such as telephone call records. The information is retained at the FCC and then destroyed in accordance with the agency records control schedule N1–173–07–1, approved by the National Archives and Records Administration (NARA), which generally requires that source records are destroyed three years after data are entered into the system, and records in the master file are destroyed three years after the case is closed.

SYSTEM MANAGERS AND ADDRESS:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications

Commission, 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. An individual requesting access must follow FCC Privacy Act regulations regarding verification of identity and amendment of records. *See* 47 CFR 0.554–0.557.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Privacy Analyst, Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include the complainants and subject entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–19292 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. DE–CA–08–0046]

Notice of Opportunity To Submit Amici Curiae Briefs in an Unfair-Labor-Practice Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to submit briefs as amici curiae on a significant issue arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute), and its unfair-labor-practice (ULP) regulations, set forth at 5 CFR part 2423. The issue concerns whether a presidential order, which was issued under § 7103(b)(1) of the Statute to exclude an agency subdivision ''from coverage under'' the Statute, precludes the Authority from finding that an employee of the excluded subdivision acted as a ''representative of the agency'' under § 7114(a)(2)(A) and (B) of the Statute. Because the Authority has not directly addressed this issue before, there is an absence of controlling precedent. And, as this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amici briefs addressing this matter.

DATES: Briefs must be received on or before September 15, 2014.

ADDRESSES: Mail or deliver briefs to Gina K. Grippando, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Chief, Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: In Case No. DE–CA–08–0046, the Federal Labor Relations Authority's (FLRA's) Chief Administrative Law Judge (ALJ) issued a recommended order to dismiss a ULP complaint against the U.S. Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah (the Respondent) for alleged violations of §§ 7114(a)(2)(B), 7116(a)(1), and 7116(a)(8) of the Statute. The FLRA's Office of the General Counsel (GC) filed exceptions to the recommended dismissal order, and those exceptions are currently pending before the Authority. A summary of the case follows.

1. Background and ALJ's Decision

The Regional Director of the FLRA's Denver Regional Office, which is part of the Office of the GC, issued a ULP complaint alleging that the Respondent violated §§ 7114(a)(2)(B), 7116(a)(1), and 7116(a)(8) of the Statute when the Air Force Office of Special Investigations (AFOSI)—which is a subdivision of the same parent agency as the Respondent—denied union representation to one of the Respondent's bargaining-unit employees (the employee) during an AFOSI-conducted investigative interview. According to the complaint, the Respondent and AFOSI worked closely together in the investigation and interview of the employee, and, consequently, when AFOSI denied the employee the union representation that he requested due to an allegedly reasonable belief that the interview might result in discipline, AFOSI acted as a ''representative of the [A]gency'' (i.e., the Respondent), within the meaning of § 7114(a)(2)(B) of the Statute. As a result, the complaint alleged, the Respondent (but not AFOSI) committed ULPs.

As relevant here, the Respondent denied the complaint's allegations on the basis that, in Executive Order 12,171, President Carter exercised his authority under § 7103(b)(1) of the Statute to ''exclude [AFOSI] from coverage under'' the Statute based on ''national[-]security requirements and considerations,'' so AFOSI's actions could not be the basis for a ULP finding against the Respondent. Exec. Order No. 12,171 (Nov. 19, 1979), 44 FR 66,565 (Nov. 20, 1979), *reprinted as amended in* 5 U.S.C. 7103 note at 647–48 (2012).

The ALJ agreed with the Respondent and found that, because Executive Order 12,171 excludes AFOSI ''from coverage under'' the Statute, the order necessarily excludes AFOSI from coverage under every provision of the Statute, including the ''representative[-]of[-]the[-]agency'' provision in § 7114(a)(2)(B). And as the ALJ found that the order precludes finding that AFOSI acted as a ''representative'' of the Respondent under § 7114(a)(2)(B), the ALJ concluded that the Respondent could not be found to have committed a ULP based on AFOSI's actions. Thus, the ALJ recommended that the Authority dismiss the complaint.

2. GC's Exceptions

The GC filed, with the Authority, exceptions to the ALJ's recommended order. In the exceptions, the GC contends, as relevant here, that the ALJ erred in finding that AFOSI cannot be a ''representative of the [A]gency'' (i.e., the Respondent), within the meaning of § 7114(a)(2)(B). The GC argues that, just as the incumbent of a position specified in § 7103(a)(2)(B) of the Statute may be excluded from the Statute's definition of ''employee'' and yet still act as a ''representative of [an] agency'' for purposes of § 7114(a)(2), so may an agency or subdivision that is excluded from coverage of the Statute under § 7103(b)(1) be found to act as a ''representative of [an] agency.'' The GC argues that a contrary conclusion would ''erode the right'' to representation under § 7114(a)(2)(B) ''by encouraging the use of investigative conduits outside the employee's bargaining unit, and would otherwise frustrate Congress' apparent policy of protecting certain federal employees when they are

examined and justifiably fear disciplinary action''—a concern that the U.S. Supreme Court found in *NASA* v. *FLRA,* 527 U.S. 229 (1999), was a permissible basis for the Authority to hold that an inspector general acted as a ''representative'' of its parent agency, for purposes of § 7114(a)(2)(B). *Id.* at 234. For those reasons, the GC contends that the Authority should not adopt the ALJ's recommended finding that the § 7103(b)(1)-exclusion order precludes finding that AFOSI was a ''representative of'' the Respondent under § 7114(a)(2).

3. Questions on Which Briefs Are Solicited

Because the Authority has not directly addressed the issue raised in the GC's exceptions before, the exceptions involve a question of first impression. Consequently, in connection with the case described above, the Authority is providing an opportunity for the parties and other interested persons to file briefs addressing the following questions:

When the President of the United States issues an order under § 7103(b)(1) of the Statute and excludes an agency or subdivision thereof ''from coverage under'' the Statute, does such an order preclude the agency or subdivision from being a ''representative of the agency'' under § 7114(a)(2)(A) and (B)?

Should the Authority interpret Executive Order 12,171 as having that effect with regard to the Air Force Office of Special Investigations?

In answering these questions, the parties and other interested persons should address: (1) The wording of the Statute and Executive Order 12,171; (2) principles of statutory construction; (3) legislative history regarding § 7103(b)(1), § 7114(a)(2)(A) and (B), and any other relevant provisions of the Statute; (4) any information regarding the history and purposes of Executive Order 12,171; (5) any applicable precedent, including the relevance, if any, of exclusions that occurred under Section 3(b)(3) of Executive Order 11,491; and (6) policy considerations.

4. Required Format for Briefs

All briefs shall be captioned ''*U.S. Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah,* Case No. DE–CA–08–0046.'' Briefs shall contain separate, numbered headings for each issue covered. Interested persons must submit an original and four (4) copies of each amicus brief, with any enclosures, on 8½ × 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's Regulations showing service of one copy of the brief on all counsel of record or other designated representatives, 5 CFR 2429.27(a) and (c), as well as the Federal Labor Relations Authority Acting Regional Director involved in this case. Accordingly, briefs must be served on: Tiffany Malin, Minahan & Muther, P.C., Attorneys at Law, 5132 W. 26th Ave., Denver, CO 80212; Phillip G. Tidmore, Agency Representative, AFLOA/JACL/LLFSC, Labor Law Relations Branch, 1500 West Perimeter Road, Suite 1370, Joint Base Andrews, MD 20762; and Tim Sullivan, Acting Regional Director, Federal Labor Relations Authority, Denver Regional Office, 1244 Speer Boulevard, Suite 446, Denver, CO 80204–3581. Interested persons may obtain copies of the ALJ's recommended dismissal order in this case by contacting the Authority's Office of Case Intake and Publication at the address and telephone number set forth above.

Dated: August 11, 2014.

Gina K. Grippando,

Chief, Case Intake and Publication.

[FR Doc. 2014–19387 Filed 8–14–14; 8:45 am]

BILLING CODE 6727–01–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.*

Arca World Logistics, LLC (NVO & OFF), 700 Tuckaseegee Road, Charlotte, NC 28208. Officers: Jessica Somera, Vice President (QI), John N. Calhoun II, President. Application Type: New NVO & OFF License.

BGA Group International Freight Fowarders, Corp. (NVO), 1320 NW 78th Avenue, Miami, FL 33126. Officers: Carlos G. Medina-Luque, President (QI), Hilda Medina, Director. Application Type: New NVO License.

Consolidated Shipping Agencies Ltd (NVO & OFF), 2570 Beverly Drive, Suite 112, Aurora, IL 60502. Officers: Gordon A. Annan, Jr., COO/Secretary (QI), McDonald C. Vasnani, President. Application Type: New NVO & OFF License.

Evangel Shipping, Inc. (NVO & OFF), 12368 East Valley Blvd., Suite 104, El Monte, CA 91732. Officer: Xiu Juan Lai, President (QI). Application Type: Add OFF Service.

GrayLion Logistics, LLC (NVO & OFF), 8298 Bayberry Road, Suite 3, Jacksonville, FL 32256. Officers: Kinda Amirdash, Vice President (QI), Glenn Patch, President. Application Type: QI Change.

Intercargo USA Corp (NVO & OFF), 12555 Orange Drive, Suite 108, Davie, FL 33330. Officers: Gerben Zwaga, Vice President (QI), Alexandre Pimenta, Secretary of Treasury. Application Type: Transfer to Asia Shipping Integrated Logistics USA, LLC and Add OFF Service.

MJS Executive Enterprises, Inc. dba Team Six International (OFF), 2173 Salk Avenue, Suite 250, Carlsbad, CA 92008. Officers: Michael J. Stevenson, President (QI), Ilse M. Stevenson, Secretary. Application Type: New OFF License.

SR International Logistics, Inc. dba High Country Maritime (NVO & OFF), 2525 16th Street, Suite 208, Denver, CO 80211. Officer: David O. Ross, President (QI). Application Type: QI Change.

World Trading Cargo Corp (NVO & OFF), 2365 NW 70th Avenue, Unit C16, Miami, FL 33122. Officers: Elizabeth M. Valbuena, Vice President (QI). Mauricio A. Palma, President. Application Type: New NVO & OFF License.

By the Commission.

Dated: August 11, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–19350 Filed 8–14–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 021430F.

Name: Ceva Freight, LLC.

Address: 15350 Vickery Drive, Houston, TX 77032.

Date Reissued: July 25, 2014.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2014–19357 Filed 8–14–14; 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.: 000641F.
Name: Wilmoth Fast Forwarding, Inc.
Address: 10004 Grizzly Street, Bakersfield, CA 93311.
Date Revoked: July 23, 2014.
Reason: Failed to maintain a valid bond.

License No.: 1909F.
Name: International Moving Service, Inc.
Address: 2768 Loker Avenue West, Carlsbad, CA 92008.
Date Revoked: July 20, 2014.
Reason: Failed to maintain a valid bond.

License No.: 14970N.
Name: Seascape Lines, Inc.
Address: 15 Forbush Road, Dublin, NH 03444.
Date Surrendered: July 30, 2014.
Reason: Voluntary surrender of license.

License No.: 15193NF.
Name: Delmar Steamship Agency, Inc.
Address: 999 Brickell Bay Drive, Suite 1901, Miami, FL 33131.
Date Surrendered: July 22, 2014.
Reason: Voluntary surrender of license.

License No.: 017213NF.
Name: GP Logistics, Inc.
Address: 2315 Landmeier Road, Elk Grove Village, IL 60007.
Date Surrendered: July 18, 2014.
Reason: Voluntary surrender of license.

License No.: 020384N.
Name: AOL Solutions, Inc. dba AOL Freight Solutions.
Address: 1836 Center Park Drive, Charlotte, NC 28217.
Date Revoked: July 31, 2014.
Reason: Failed to maintain a valid bond.

License No.: 020434N.
Name: Safe Harbor Logistics, Inc.
Address: 5506 Fountain Bridge Lane, Houston, TX 77069.
Date Revoked: July 24, 2014.
Reason: Failed to maintain a valid bond.

License No.: 020879F.
Name: Aarid Enterprise Corporation.
Address: 3 Tremont Drive, Millersville, MD 21108.
Date Surrendered: July 31, 2014.
Reason: Voluntary surrender of license.

License No.: 021430N.
Name: Ceva Freight, LLC dba Ceva Ocean Line dba EGL Ocean Line.
Address: 15350 Vickery Drive, Houston, TX 77032.
Date Surrendered: July 25, 2014.
Reason: Voluntary surrender of license.

License No.: 021615N.
Name: Bimini Shipping LLC.
Address: 3301 NW South River Drive, Miami, FL 33142.
Date Revoked: July 29, 2014.
Reason: Failed to maintain a valid bond.

License No.: 022802N.
Name: Silver Brilliant Logistics, Inc.
Address: 15436 East Valley Boulevard, City of Industry, CA 91746.
Date Revoked: July 20, 2014.
Reason: Failed to maintain a valid bond.

License No.: 022306N.
Name: Worldunimax Logistics, Inc.
Address: 250 West Walnut Street, Compton, CA 90220.
Date Revoked: July 25, 2014.
Reason: Failed to maintain a valid bond.

License No.: 023206NF.
Name: Leading Edge Logistics LLC.
Address: 2098 West Chester Pike, Suite 201, Broomall, PA 19073.
Date Revoked: July 24, 2014.
Reason: Failed to maintain valid bonds.

License No.: 023571N.
Name: Transpacific Line, Inc.
Address: 203–08 28th Avenue, Suite #1F, Bayside, NY 11360.
Date Surrendered: July 24, 2014.
Reason: Voluntary surrender of license.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2014–19349 Filed 8–14–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer, Cynthia Ayouch, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer, Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the implementation of the following information collection:

Report title: Complex Institution Liquidity Monitoring Report and Liquidity Monitoring Report.

Agency form number: FR 2052a and FR 2052b.

OMB control number: 7100–to be assigned.

Frequency: FR 2052a: Daily, twice a month, and on occasion. FR 2052b: Monthly and quarterly.

Effective dates: FR 2052a: September 11, 2014.

FR 2052b: November 30, 2014, for monthly reporters and December 31, 2014, for quarterly reporters.

Respondents: FR 2052a: U.S. Bank Holding Companies (BHCs) that the Financial Stability Board designated as

Global Systematically Important Banks (G–SIBs) [1] and foreign banking organizations (FBOs) with U.S. broker-dealer assets > $100 billion. FR 2052b: U.S. BHCs (excluding G–SIBs) with total consolidated assets > $50 billion (including FBO subsidiaries) and U.S. BHCs (not controlled by FBOs) with total consolidated assets of $10 billion–$50 billion.

Estimated annual reporting hours: FR 2052a: 433,280 hours. FR 2052b: 62,640 hours.

Estimated average hours per response: FR 2052a: One-time implementation, 160 hours; U.S. BHCs that the Financial Stability Board designated as G–SIBs, 200 hours; FBOs with U.S. broker-dealer assets > $100 billion complete form, 200 hours; FBOs with U.S. broker-dealer assets > $100 billion abbreviated form, 60 hours; Ad-Hoc, 100 hours.

FR 2052b: One-time implementation, 480 hours; U.S. BHCs (excluding G–SIBs) with total consolidated assets > $50 billion (including FBO subsidiaries), 60 hours; U.S. BHCs (not controlled by FBOs) with total consolidated assets of $10 billion–$50 billion, 60 hours.

Number of respondents: FR 2052a: U.S. BHCs that the Financial Stability Board designated as G–SIBs, 8; FBOs with U.S. broker-dealer assets > $100 billion complete form, 8; FBOs with U.S. broker-dealer assets > $100 billion abbreviated form, 8; Ad-Hoc, 16.

FR 2052b: U.S. BHCs (excluding G–SIBs with total consolidated assets > $50 billion (including FBO subsidiaries), 24; U.S. BHCs (not controlled by FBOs) with total consolidated assets of $10 billion–$50 billion, 47.

General description of report: This information collection is authorized pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844), section 8 of the International Banking Act (12 U.S.C. 3106) and section 165 of the Dodd-Frank Act (12 U.S.C. 5365) and are mandatory. Section 5(c) of the Bank Holding Company Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition. Section 8(a) of the International Banking Act subjects FBOs to the provisions of the Bank Holding Company Act. Section 165 of the Dodd-Frank Act requires the Board to establish prudential standards for certain BHCs and FBOs; these standards include liquidity requirements. The individual financial institution information provided by each respondent would be accorded confidential treatment under exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)). In addition, the institution information provided by each respondent would not be otherwise available to the public and is entitled to confidential treatment under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)), which protects from disclosure trade secrets and commercial or financial information.

Abstract: The FR 2052a and FR 2052b reports collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities on a consolidated basis and by material entity subsidiary. These reports will be used to monitor the overall liquidity profile of certain U.S. BHCs and FBOs, with the frequency and form of collection determined by the asset size of the organization. These data will also provide detailed information on the liquidity risks within different business lines (e.g., financing of securities positions and prime brokerage activities). In particular, this information will serve as part of the Federal Reserve's supervisory surveillance program in its liquidity risk management area and will provide timely information on firm-specific liquidity risks during periods of stress. Analysis of both systemic and idiosyncratic liquidity risk issues will then be used to inform the Federal Reserve's supervisory processes, including the preparation of analytical reports that detail funding vulnerabilities.

Current Actions: On September 19, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 57634) requesting public comment for 60 days on the implementation of the FR 2052a and FR 2052b. The comment period expired on November 18, 2013. The Federal Reserve received eight comment letters addressing the proposed implementation of this information collection. The comments are summarized and addressed below.

Summary of Public Comments

The Federal Reserve received eight comment letters on the proposed implementation of the FR 2052a and FR 2052b: Two from trade organizations, four from commercial banks, and two from FBOs. In general, comments focused on scope of application (respondent panel threshold), the implementation schedule, frequency of reporting, certification requirements, confidentiality, burden, interaction with provisions of other existing information collections, proposed ad-hoc data collection, and future initiatives. The substantive comments are discussed in detail below. In addition, the Federal Reserve has revised the reporting forms and instructions, as appropriate, in response to technical comments received.

A. Proposed Scope of Application (Respondent Panel Threshold)

1. Thresholds for U.S. BHCs and FBOs

The Federal Reserve proposed the following thresholds.

- The following entities would submit the FR 2052a:
  - U.S. BHCs that the Financial Stability Board has designated as Global Systemically Important Banks (G–SIBs).
  - FBOs with U.S. broker-dealer assets greater than $100 billion.
- The following entities would submit the FR 2052b:
  - U.S. BHCs (excluding G–SIBs) with total consolidated assets greater than $50 billion.
  - U.S. BHCs with total consolidated assets equal to $10 billion or more, but no greater than $50 billion.
  - FBOs with total U.S. assets greater than $50 billion and U.S. broker-dealer assets less than $100 billion.
- For research purposes and anticipated future enhancements of the FR 2052a, additional ad-hoc reporting of items not included on the proposed FR 2052a would have been requested of up to 16 respondents with a reporting schedule provided 30 days prior to the first data submission.

A commenter requested further clarification on the calculation of total broker-dealer assets for determining whether an FBO would be subject to the FR 2052a or the FR 2052b, and also when and how the FBO must inform the Federal Reserve about the size of the broker-dealer assets as it gets closer to the threshold. Another commenter requested that the Federal Reserve confirm that the reporting thresholds specified in the proposal refer to a broker-dealer's total consolidated assets. The Federal Reserve clarified the FR 2052a instructions to note that the asset threshold for FBOs to report on the FR 2052a is based on the total consolidated assets of an FBO's U.S. broker-dealer subsidiaries. In addition, the Federal Reserve clarified that all asset thresholds for the reporting forms would be based on total consolidated assets for all U.S. BHCs and total U.S. assets for FBOs. These clarifications are consistent with other reporting and regulatory requirements and with the intent of the proposed requirements.

One commenter requested that the Federal Reserve delay the effective date

[1] A list of G–SIBs is available at *http://www.financialstabilityboard.org/publications/r_131111.pdf.*

for application of the reporting requirements to the U.S. intermediate holding companies (IHCs) that FBOs will be required to form under Regulation YY.[2] This commenter asserted that FBOs would need additional time to take the necessary actions to ensure compliance with the FR 2052 reporting requirements as applied to IHCs. This commenter also requested that the Federal Reserve publish for comment a proposal incorporating IHCs into the FR 2052 reporting regime after issuance of the final rule requiring IHCs. IHCs are not required to submit FR 2052 reports at this time. As noted below, the Federal Reserve anticipates modifying the liquidity reporting requirements to align, as appropriate, with any final liquidity regulatory requirements, public disclosure requirements, and with the recently finalized enhanced prudential standards in Regulation YY, including potential reporting requirements for IHCs. As such, the Federal Reserve will not delay the effective date for application of the reporting requirements to FBOs.

One commenter asserted that it is not appropriate to include U.S. BHCs with total consolidated assets of $10 billion to $50 billion in the scope of the reporting requirements, particularly since these BHCs were excluded from the scope of the Federal Reserve's proposal to establish a minimum liquidity coverage ratio (LCR) requirement for BHCs with $50 billion or more in total consolidated assets. The commenter requested that the Federal Reserve remove these entities from the scope of the information request. The Federal Reserve notes that, while some data elements required to construct the LCR metric may appear in the FR 2052b report, the FR 2052b report is not currently designed for LCR implementation, calculation, or reporting, but was designed to enable supervisors to monitor liquidity risk. The Federal Reserve believes that the FR 2052b would serve as an important part of the Federal Reserve's supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress for institutions of this size. Therefore, the Federal Reserve will not exclude U.S. BHCs (that are not controlled by FBOs) with total consolidated assets of $10 billion to $50 billion from the requirement to report on the FR 2052b.

The Federal Reserve anticipates making significant changes to the liquidity reporting requirements in the near-to-medium term following finalization of the FR 2052a and FR 2052b. For this reason, only FBOs with more than $100 billion in U.S. broker-dealer assets will be subject to the FR 2052a reporting requirements as their greater systemic importance in the U.S. financial system necessitates regular liquidity reporting from their U.S. operations. All other FBOs will be relieved from the requirement to submit the FR 2052b at this time, but would continue to provide supervisors with information regarding their liquidity position through the examination process upon request. Additionally, the Federal Reserve will not require the FR 2052b report from U.S. BHCs with total consolidated assets of $10 to $50 billion that are controlled by FBOs at this time, pending further development and observation of the liquidity reporting regime.

In addition, the Federal Reserve may exempt a banking organization (or one of its subsidiaries that is required to report) from reporting on the FR 2052a or FR 2052b, based on the liquidity risk profile of the organization. The Federal Reserve continues to believe that, in general, the proposed scope of application for both reports is appropriate with respect to the size, complexity, and activities of the banking organizations that would be subject to the reporting requirements, both for the purpose of monitoring the safety and soundness of the individual institutions as well as for monitoring any systemic risk associated with their liquidity positions and liquidity management. Therefore staff does not anticipate recommending additional exemptions in the near future.

In summary, the Federal Reserve is adopting the following thresholds in response to the comments:

- The following entities would submit the FR 2052a:
  - U.S. BHCs designated as G–SIBs.
  - FBOs with U.S. broker-dealer assets over $100 billion.
- The following entities would submit the FR 2052b:
  - U.S. BHCs (excluding G–SIBs) with total consolidated assets greater than $50 billion (including FBO subsidiaries).
  - U.S. BHCs (not controlled by FBOs) with total consolidated assets of between $10 billion and $50 billion.
- For research purposes and anticipated future enhancements of the FR 2052a, additional ad-hoc reporting of items not included on the proposed FR 2052a would be requested of up to 16 respondents with a reporting schedule provided 30 days prior to the first data submission.

2. Consolidation

The proposed FR 2052a instructions indicated that FBOs would report for their consolidated U.S. operations as well as material entities managed from the United States. Some commenters asked that the Federal Reserve clarify how the proposed reporting requirements would apply to U.S. operations of FBOs. Commenters also requested that the Federal Reserve provide more specificity on which operations would be ''material'' U.S. operations and thus within the scope of the reporting requirements. A commenter recommended that the asset size of a U.S. broker-dealer subsidiary of an FBO that is required to report on the FR 2052b be given strong weight in determining whether the subsidiary should be treated as a material entity.[3] One commenter requested that the Federal Reserve clarify whether a reporting FBO would be required to submit a single FR 2052a or FR 2052b that would include the entirety of the FBO's U.S. operations within the scope, or if separate reports would be required for each entity, and further whether each reporting entity would be considered a material entity. This commenter noted that the submission of an all-inclusive report presents greater challenges and burdens to the institution than submission of separate reports for each material entity. This commenter further requested that, if the Federal Reserve requires a single filing, the FBO be given the option of having its material entities each file separately.

SR letter 10–06 established a general supervisory expectation that institutions should actively monitor and control liquidity risks at the level of individual legal entities, and the group as a whole, incorporating processes that aggregate data across multiple systems in order to develop a group-wide view of liquidity risk exposures. Therefore, banking organizations should have the reporting

[2] 79 FR 17240 (March 27, 2014). FBOs with $50 billion or more in global consolidated assets and with $50 billion or more in U.S. assets are required to establish an IHC to hold the FBOs entire ownership interest in all U.S. subsidiaries, including bank and broker-dealer subsidiaries.

[3] One commenter observed that the draft instructions for the FR 2052a, which refer to filing requirements for the FR 2052b, did not reference the assets of a U.S. broker-dealer subsidiary as part of the criteria for identifying FR 2052b reporting FBOs and suggested that the omission was inadvertent. The commenter requested that the Federal Reserve set forth the scope of the FR 2052a reporting requirements in the final FR 2052a instructions rather than noting it in FR 2052b instructions. The final FR 2052 instructions include comprehensive requirements for each set of instructions, eliminating reference to other forms, as appropriate.

capability to cover the entirety of their U.S. operations as well as individual entities. However, FBOs will not be required to report the entirety of their U.S. operations on a consolidated basis at this time, in anticipation that many FBOs may reorganize their U.S. operations to form an IHC in connection with the implementation of Regulation YY. In addition, the liquidity positions and funding activities of each material entity are distinct, and funding is often segregated due to legal restrictions, so that supervisors would need the ability to monitor the liquidity of these entities separately. Thus the final reporting requirements have been clarified to note that FBOs must submit separate reports for each material reporting entity. FBOs with more than $100 billion in U.S. broker-dealer assets are required to submit separate reports for each material entity in their U.S. operations and for their consolidated U.S. operations, excluding U.S. BHCs.

In addition, the final reporting requirements have been clarified to note that material entities (including material foreign branches) are entities that pose liquidity risk, provide liquidity support to, or depend on liquidity support from, affiliates. The Federal Reserve does not consider the asset size of the entity to be the determining factor of whether the subsidiary should be treated as material for purposes of liquidity risk monitoring. Institutions will be required to consult with supervisors to determine which entities are material for purposes of the liquidity reporting requirements.

The proposed FR 2052b instructions indicated that FBO branch network activities managed from the United States (e.g., activities in the Cayman Islands and Nassau) should be reported in the ''consolidated tab.'' [4] One commenter requested that the Federal Reserve clarify whether these branch network activities are the same as what was referred to in the proposed instructions as ''offices fully or partially managed by U.S.-based operations.'' As noted above, FBOs that would have been within the proposed scope of application for the FR2052b are not required to submit reports on the FR 2052b under final reporting requirements. However, FBOs that are required to report on the FR 2052a should also report on their Cayman and Nassau branches. Cayman and Nassau branches will report under the final reporting requirements as stand-alone entities due to their role in funding transactions for U.S. operations.

One of the commenters asked for clarification on which offices outside the United States would be relevant for determining who is an ''external counterparty.'' This commenter also requested that the Federal Reserve confirm that intercompany transactions be eliminated regardless of the scope of the U.S. operations included in the reports. A commenter also requested confirmation that the assets of offshore branches managed or controlled by a U.S. branch or agency should not be included in the calculation of the $50 billion threshold.[5] In addition, a commenter also requested clarification as to whether the Board intends for covered companies to report FR 2052 data on a transactional or aggregate basis.

The Federal Reserve clarified the FR 2052a and FR 2052b instructions to note that, for FBOs, an ''external counterparty'' is a third party that does not have any relationship to the firm. For FBOs, intercompany transactions should capture transactions between the FBO's U.S. entities and all affiliates globally. For FBOs, non-U.S. entities and related Cayman and Nassau entities are considered external counterparties. In general, non-U.S. entities are not required to report on the FR 2052 reports. However, as noted above, related Cayman and Nassau entities will report under the final reporting requirements as stand-alone entities. All other entities that are affiliated with the FBO, but are non-U.S. entities, are also considered external counterparties and are not covered by the reporting requirements.

For purposes of reporting on the U.S. ''Consolidated'' entity, as defined in the FR 2052a and FR 2052b instructions, transactions between entities within the consolidated framework will not be reported. However, transactions with external counterparties will be reported. In response to the comment on intercompany transactions, FBOs are not required to report transactions between the entities within the consolidated framework. As noted above, U.S. BHCs controlled by FBOs are considered to be individual reporting entities and, as such, transactions between U.S. ''Consolidated'' entities and U.S. BHCs will be reported. Outside of the ''Consolidated'' entity report, individual reporting entities as defined for the submission will report all transactions between other entities as well as external third party transactions. In addition, companies should report the FR 2052a and FR 2052b data on an aggregate, rather than transactional basis. The Federal Reserve clarified the FR 2052a and FR 2052b instructions to note that eliminating intercompany transactions entirely would not present an accurate depiction of a reporting firm's liquidity profile.

3. Transitions Between FR 2052a and FR 2052b

One commenter requested clarification of the reporting criteria threshold and timeframe when an FBO transitions from the FR 2052b report to the FR 2052a. The commenter further requests that the Federal Reserve clarify whether an FBO that begins filing the abbreviated FR 2052a would be permitted to transition back to filing the FR 2052b if the assets of its U.S. broker-dealer subsidiary falls below the $100 billion threshold.

The Federal Reserve clarified the FR 2052a and FR 2052b instructions to note that once an FBO or a U.S. BHC reaches or exceeds the threshold and begins filing a particular FR 2052 report, it should continue to file that FR 2052 report going forward unless the total U.S. assets of the FBO or the total consolidated assets of the U.S. BHC subsequently fall to and consistently remain below the threshold for four consecutive quarters. This is similar to the calculation methodology for determining when an institution is subject to the enhanced prudential requirements under Regulation YY.[6]

B. Implementation Schedule and Frequency of Reporting

1. Implementation Schedule and Submission Deadlines

The Federal Reserve proposed the following implementation schedule:

- U.S. G–SIBs reporting on the FR 2052a would report daily, submitting their first report on January 3, 2014, with an initial as-of date of December 31, 2013.
- FBOs reporting on the FR 2052a would report the complete FR 2052a on occasion and an abbreviated FR 2052a twice a month, submitting their first report on January 17, 2014, with an initial as-of date of January 15, 2014.

[4] Institutions should report total positions of the consolidated entity on the FR 2052b, e.g. top tier BHC.

[5] FBOs with U.S. broker-dealer assets over $100 billion that are required to submit the FR 2052a would have more than $50 billion in non-branch and agency assets. As a result, the question of whether to include U.S. branch and agency assets is no longer relevant because no other FBOs would be subject to reporting requirements at this time.

[6] *See* 79 FR 17240 (March 27, 2014). FBOs or U.S. BHCs that reach the relevant threshold as of June 30, 2014 for one of the FR 2052 reports must begin reporting going forward. Generally, supervisors will review the reporting status of a banking organization during the examination process.

• U.S. BHCs (excluding G–SIBs) with total assets of greater than $50 billion reporting on the FR 2052b would report monthly, submitting their first report on January 10, 2014, with an initial as-of date of December 31, 2013.

• U.S. BHCs with total assets of $10 billion to $50 billion would report on the FR 2052b quarterly, submitting their first report on July 10, 2014, with an initial as-of date of June 30, 2014.

• FBOs with total U.S. assets greater than $50 billion and less than $100 billion in U.S. broker-dealer assets would report on the FR 2052b on occasion.

Several commenters raised concerns that there would be insufficient time to implement the reporting requirements, observing that much of the required data lies outside the systems currently used for regulatory reporting. The commenters asserted that enhancing internal systems to include additional data elements takes time in order to secure internal funding for new systems, develop the systems required, and source the data elements and ensure they are in a properly controlled environment. They also noted that implementation would not be able to begin until the scope of reporting has been clarified and specific requirements have been finalized. One commenter also claimed that development of new systems are in suspension in connection with undertaking regular year-end reporting, which would make it more difficult to meet the proposed timeframe. While some commenters requested additional time for implementation of the requirements, one commenter requested that the Federal Reserve suspend implementation of the FR 2052a permanently and focus on anticipated new liquidity reporting requirements that will reflect the anticipated final liquidity regulations, or in the alternative, delay implementation until December 31, 2014, to permit organizations additional time to address new reporting and certification requirements. This commenter also requested that the Federal Reserve revise the proposed reporting time deadlines for daily reports and for the certified month-end report. Another commenter requested that to the extent the Federal Reserve intends for the FR 2052 reports to be complementary to the information required by anticipated liquidity regulations, the Federal Reserve consider delaying the effectiveness of the information collection until the liquidity regulations (including relevant definitions) have been finalized and reporting requirements related to the liquidity regulations have been published for comment.

One commenter noted that the draft FR 2052a instructions do not discuss the ''as-of'' date that applies to the FR 2052a report, nor do the draft instructions specify the first submission date for either the FR 2052a or FR 2052b reports. The commenter requested that the final instructions provide this information. One commenter requested that the Federal Reserve provide a rationale for requiring submission of the first abbreviated FR 2052a two days after the proposed January 15, 2014, as-of date or for requiring such reporting on a twice-a-month basis. This commenter also suggested phasing in the reporting requirement by initially requiring submission of the FR 2052a on a monthly basis then increasing to twice-a-month reporting. One commenter stated that it does not believe the proposed 30-day lead-time for new ad-hoc reporting requirements will be sufficient.

The Federal Reserve notes that these reports will replace liquidity data that is currently collected with an expanded and more standardized data collection. The Federal Reserve believes that much of the FR 2052a and FR 2052b data are already being collected for most of the covered institutions with a similar submission date, on a similar frequency. However, because the FR 2052b is substantively more expansive than data currently collected from large and regional institutions and to reduce reporting burden on the institutions, the first monthly submission date will be December 15, 2014, for data, with an as-of date of November 30, 2014 and the first quarterly submission date will be January 15, 2015, for data, with an as-of date of December 31, 2014. The proposed 30-day lead-time for FR 2052a ad-hoc reporting will be retained as proposed. As discussed above, the Federal Reserve believes the requested data should be readily available in the systems of reporting institutions and therefore the 30-day lead-time should be sufficient for institutions to produce the reports. Due to administrative oversight, the proposed as-of dates and submission dates were provided only in the FR 2052 OMB supporting statement.

FBOs that do not currently report liquidity data similar to what is required on the FR 2052a and FR 2052b would have to build new reporting systems to comply with the proposed requirements. As noted above, the Federal Reserve modified the scope of FBO reporting to help alleviate reporting burden. To the extent individual U.S. BHCs that are subsidiaries of FBOs and that meet the threshold for application of the final reporting requirements have not been regularly submitting similar liquidity information to its supervisors, the Federal Reserve will consider individual requests for extensions of time prior to the first required submission, in order to allow institutions to submit the reports without undue burden.

One commenter noted that while the firms required to file the proposed FR 2052a may have the systems, processes, and capabilities to provide relevant data on a daily basis, monthly FR 2052b filers may not be similarly situated and may be unable to aggregate and submit the required data only 10 days after it is collected, as required by the proposal. This commenter noted that companies would likely be in a position to populate the monthly FR 2052b using archived data that may not be available until the 15th day of each month and requested that covered companies be permitted to submit the monthly FR 2052b on the 20th day of each month. The Federal Reserve notes that institutions have been submitting similar liquidity information between 10 and 15 calendar days after the cut-off date every month. As such, the Federal Reserve continues to believe that 15 calendar days is a reasonable timeframe for institutions to submit FR 2052b reports.

Two commenters requested that, in order to reduce operational burden, submissions be structured as ''off-cycle'' or on non-quarter-end months so that it would not coincide with the timing of other regulatory reporting and that they be based on data collected and submitted during the second quarter of the calendar year. The Federal Reserve believes that ''off-cycle'' reporting of liquidity data would be inconsistent with the objectives of the data collection. Information gathered on the FR 2052 forms will serve as part of the Federal Reserve's supervisory surveillance program for liquidity risk management and provide timely information on firm-specific liquidity risks during periods of stress. The Federal Reserve believes the data collection is a critical component of the Federal Reserve supervisory process and would not be available through existing regulatory reports. Moreover, many of the firms that are subject to the reporting requirements have been providing substantively similar information to supervisors on a regular basis. Therefore, the Federal Reserve believes that the FR 2052 reporting could not be effectively imposed ''off-cycle''.

Because the process for finalizing the reporting requirements has extended beyond the proposed implementation dates and to respond to concerns raised by commenters, the Federal Reserve has adopted the implementation schedule set forth below. This modified implementation schedule should reduce burden and allow sufficient time for respondents to modify or refine their systems in order to meet the reporting requirements:

- U.S. G–SIBs must file their first FR 2052a submission by September 15, 2014, with an initial as of date of September 11, 2014.
- U.S. BHCs (excluding G–SIBs) with total consolidated assets of greater than $50 billion must file their first FR 2052b submission by December 15, 2014, with an initial as of date of November 30, 2014.
- U.S. BHCs (not controlled by FBOs) with total consolidated assets of between $10 billion and $50 billion must file their first FR 2052b submission by January 15, 2015 with an initial as of date of December 31, 2014.
- FBOs with U.S. broker-dealer assets greater than $100 billion must file their first abbreviated FR 2052a by September 15, 2014, with an initial as of date of September 11, 2014. These FBOs file a complete FR 2052a on occasion, with advanced notice from supervisors.
- FR 2052a ad-hoc reports will be provided with a reporting schedule 30 days prior to the first data submission.

SR letter 10–06 established the general expectation that institutions may be required to provide the daily computation of regular liquidity risk reports and supplemental information to supervisors as conditions warrant, through the examination process. More frequent and detailed reporting may be necessary for effective supervision during times of increasing liquidity stress. As such, the Federal Reserve reminds institutions that the Federal Reserve may adjust the frequency of liquidity reporting as market conditions and supervisory needs in order to carry out effective continuous liquidity monitoring. If institutions (domestic or foreign) are asked to report additional data due to heightened supervisory needs, the notification may be sent to the firm less than 30 days in advance and the data collection would be expedited.

2. Frequency of Reporting

One commenter requested that the Federal Reserve specify the required frequency of reporting in the instructions. A commenter requested that the Board clarify whether it contemplates requiring submission of a complete FR 2052a on a more frequent basis based on the circumstances of a particular FBO or market conditions. The commenter requested that the Board provide these FBOs with adequate advanced notice and that the Board accept these reports on an uncertified basis. A commenter stated that it would be appropriate to base annual FR 2052b reporting on the same timeframe as the submission of the complete FR 2052a for FBOs.

The Federal Reserve clarified the FR 2052a instructions to note that FBOs with U.S. broker-dealer assets over $100 billion will submit the complete FR 2052a on occasion, after 30 days prior notice from supervisors. The Federal Reserve clarified the FR 2052a instructions to note that ''on occasion'' reporting would not necessarily result in annual reporting. The Federal Reserve may request FBOs to complete the FR 2052a more or less often than once a year as part of specific supervisory review or changes in liquidity risk positions. A request for a complete FR 2052a report would be sent to reporting institutions at least 90 days in advance. Appropriate frequency of reporting is important to ensure that supervisors receive timely information about the liquidity risk and position of banking organizations commensurate with their risk profile and activities. Due to the complexity, differences in the size of reporting institutions, as well as the differences in the supervisory programs, the Federal Reserve believes that synchronizing the submissions of the FR 2052a and FR 2052b would not be appropriate and is adopting the proposed reporting frequency, as described above. Additionally, the Federal Reserve notes that the proposed frequency of reporting coincides, in many cases, with liquidity information already provided to supervisors, which should result in a minimal to modest increase in burden.

C. Certification Requirements and Confidentiality

1. Certification Requirements

The Federal Reserve proposed that daily data submissions on the FR 2052a would be provided on a best-efforts basis; however, the month-end submission would be required to be certified. FBOs submitting the FR2052a abbreviated report twice a month would not have been required to certify those submissions, but would have been expected to certify the complete FR2052a that is submitted on an occasional basis. The FR 2052b reports submitted monthly, quarterly, and on an occasional basis would have been required to be certified.

Two commenters expressed concerns about the costs associated with certification, which may further increase the burden on institutions. One of these commenters noted that these costs are difficult to estimate due to an imprecise understanding of the requirements and that the estimated costs may be greatly increased if the certification process needs to be automated and institutionalized. Lastly, two commenters requested that the certification cover only items that are historical in nature and that forward-looking information will either be exempt from certification or that the instructions note that any forward-looking information and estimated data will reflect reasonable accuracy. One of these commenters requested that, if certification covers the entire report, the Federal Reserve include cautionary language regarding forward-looking information similar to that used in reports submitted to the Securities and Exchange Commission.

Several commenters requested that the certification process be delayed until institutions fully understand the new reporting requirements and are able to build and refine their reporting infrastructure to resolve ambiguities and implement control procedures. In addition, one commenter requested that the Federal Reserve extend the certified report submission time for G–SIBs to accommodate firms on the West Coast. Another commenter recommended that the timing for submission of certified reports be extended toward the end of the month because the comparison point for certification would not yet be completed by the 10th calendar day. One commenter suggested that the Federal Reserve consider phasing in the certification requirement to take into account the different reporting capabilities of different covered companies. Another commenter suggested that the introduction of new requests not be integrated into, or subject to, certification requirements of the FR 2052a until organizations have been given a reasonable amount of time to implement new reporting protocols for the new data elements.

With regard to the certification instructions, one commenter requested that the certification requirements and the precise language of the certification be set forth directly in the relevant reporting instructions. The commenter recommended that the standard for submission of uncertified reports be set forth directly in the instructions to each form and that this standard call for the submission of ''reasonable estimates'' on

a ''best efforts'' basis. This commenter also requested that the Federal Reserve clarify the identity of the individual required to certify the reports.

The Federal Reserve removed the proposed certification requirements for FR 2052a and FR 2052b reports at this time. The reporting requirements are new and based on information submitted to supervisors through new systems. Furthermore, as discussed above, the Federal Reserve anticipates revising the reporting requirements in the near future, which would require additional systems changes. Therefore, the Federal Reserve believes that the additional operational burden that may be imposed as part of a certification requirement would likely be of limited benefit at this time. Institutions will be expected to submit high quality data without any material errors. The Federal Reserve notes that it is a federal violation to enter false information in a BHC's reports with the intent to defraud or deceive the Board.[7]

2. Confidentiality

One commenter requested that the final instructions address the confidentiality of the FR 2052 reports. The commenter also requested clarification of which items would be considered individual financial information, and thus protected as confidential supervisory information, and which items would be considered institution information and thus protected as trade secrets or commercial or financial information. This commenter also requested that the Federal Reserve clarify why all items are not protected as confidential supervisory information. The Federal Reserve notes that because the information collected on the reports is used for supervisory monitoring, all information submitted by respondents would be treated as confidential supervisory information and has clarified the final instructions.

D. Burden and Alignment With Existing Information Collections

One commenter estimated that the man hours per year that would be required to produce the required information would be 6,000 man hours more than the estimate provided by the Federal Reserve. The commenter also estimated that gains from automation would reduce the effort to 2,000 man hours per year. The commenter estimated that it would incur approximately $2.5 million for IT development, $600,000 to run a tactical reporting solution for the first year and an ongoing $200,000 per year for staff to improve systems to comply with the FR 2052 reports. The commenter noted that these costs are incremental to those that will be incurred if the *Report of Selected Money Market Rates* (FR 2420; OMB No. 7100–0357) reporting is implemented as proposed. Another commenter asserted that the cost involved with the proposed data collection would be almost double what was estimated in the proposal. In response, the Federal Reserve has increased the ongoing burden and cost estimates, adding implementation costs, for both the FR 2052a and FR 2052b.

Several commenters raised concerns about the additional burden imposed by the proposed reporting requirements. The commenters asked whether the FR 2052 reports would be additional reports, or if they would replace the current supervisory liquidity data requests. Another commenter observed that there are inconsistencies between the data points proposed to be collected by the FR 2052a and noted that supervisors have regularly requested and questioned whether these differences were intentional. As mentioned above the FR 2052a and FR 2052b reports would replace current supervisory data requests for similar information and any differences between the proposed reporting forms and past supervisory requests were intended.

A commenter requested that the Federal Reserve clarify whether the scope of the U.S. operations that should be included in the FR 2052a report equates with the scope of the U.S. operations that FBOs will be required to report on the recently revised Form FR Y–7Q (OMB No. 7100–0125). The Federal Reserve reviewed the FR 2052a and the FR Y–7Q and concluded that in general, the FR 2052a does not align with the FR Y–7Q or other regulatory filings. The Federal Reserve notes that information collected on the FR Y–7Q is used to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations. The FR 2052 reports require a different combination of financial information to assist supervisors in effectively monitoring the liquidity position and risk management of significant U.S. operations of FBOs.

One commenter requested that the Federal Reserve take steps to avoid the imposition of duplicative and redundant liquidity reporting requirements. Another commenter requested that the Federal Reserve consider the cumulative impact of the various data collection initiatives and reporting requirements to which FBOs are or potentially will be subject, observing that these institutions face substantial practical challenges in developing and implementing the systems and governance mechanisms needed to comply with the various reporting requirements. The commenter observed that many of the FBOs subject to this proposal also control U.S. bank holding company subsidiaries that are now subject to new requirements to file the *Capital Assessments and Stress Testing* information collection (FR Y–14; OMB No. 7100–0341) and the *Banking Organization Systemic Risk Report* (FR Y–15; OMB No. 7100–0352), which demand time and resources, and noted that the same personnel involved in this reporting would also be involved in the FR 2052 reporting process.

Several commenters asked whether the proposed liquidity reports would align with recent rulemakings, such as the proposed LCR and Regulation YY, and raised concerns about potential burden implications if the reports were not aligned with those regulations. Two commenters requested that the Federal Reserve clarify the relationship between the FR 2052 reports and future reporting requirements related to the LCR proposal. Several commenters expressed concern that certain terminology and definitions in the FR 2052 reports do not fully align with the LCR proposal and that they may incur material initial set-up expenses to upgrade their systems while the proposal is still in the rulemaking process. Commenters requested that the Federal Reserve ensure that definitions and instructions align with current reporting requirements as well as the new proposals, and one commenter requested that the Federal Reserve clarify the basis for divergence between the categorization schemes in the FR 2052 reports and the proposed LCR.

A commenter requested clarification of the intended relationship between the proposed reports and any anticipated liquidity stress testing reporting that would be required with respect to Regulation YY, including the degree to which it is contemplated that the items included in the FR 2052 reports would be included in the determination of the liquidity buffer as reported pursuant to that rule. This commenter noted that with respect to the proposed IHC requirement in Regulation YY, it believes newly created IHC's would be ''material entities'' that would be within the scope of the FR 2052 reporting requirements. This commenter also anticipates that formation of an IHC will require modifications to reporting systems and governance structures and processes put in place under the

[7] *See* 15 U.S.C. 1005.

proposal or the development of new systems structures and processes.

As discussed above, the Federal Reserve has reviewed the regulatory burden, including reporting requirements, and subsequently modified the scope of application. The Federal Reserve notes that the FR 2052 forms are supervisory data collections to monitor the liquidity risk and positions of the banking organizations that would be subject to the requirements. In addition, the reporting forms as proposed were not intended to align directly with regulatory requirements that are, or have been, in development and that are not fully implemented. The Federal Reserve notes that any future FR 2052 reporting requirements to ensure consistency with the final LCR rule and Regulation YY as fully implemented would be proposed at a later date. As discussed above, material entities would be defined in the FR 2052 as entities that pose liquidity risk, provide liquidity support to, or depend on liquidity support from affiliates.

Further, the Federal Reserve believes that other data collections mentioned as potentially duplicative by commenters, such as the Federal Financial Institutions Examination Council (FFIEC) *Consolidated Reports of Condition and Income* (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036), or the *Consolidated Financial Statements for Holding Companies* (FR Y–9C; OMB No. 7100–0128), do not provide sufficient granularity or classification structures needed to provide an in depth view of a firm's liquidity profile. Furthermore, the Federal Reserve notes that FR 2052 data will be shared with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (FDIC) to prevent potential duplicative data requests from those agencies.

One commenter noted that the ''Asset Category Table'' in Appendix B to the FR 2052a instructions identifies various categories of collateral for purposes of classifying and reporting securities finance transactions. The commenter asserted that these categories are not used in the financial services marketplace, thus making compliance complex and confusing. The commenter recommended that the Federal Reserve use a more generic categorization scheme that conforms to existing regulations and market practice, and aligns the definitions among various information collections. The Federal Reserve acknowledges that the categories of collateral in Appendix B are not standard terms; however, institutions are using those categories in the current data submission and any further modification may pose a significant burden to those institutions. The Federal Reserve notes that, where appropriate, the terminology or categories in future FR 2052 reports would be made consistent with other regulatory reports; however, difference may still exist due to data definitions. As discussed above, other regulatory reports do not provide sufficient granularity or the classification structure needed to provide an in depth view of liquidity.

A commenter observed that there appear to be redundancies between the FR 2052a and FR 2052b and the FR 2420. A commenter claimed that the FR 2420 report poses a significant burden, especially to institutions required to submit the daily FR 2052a report, and suggested that the Federal Reserve adopt a reporting template that meets its needs across its market and supervisory functions and that it use this as baseline data during regulatory examinations. The Federal Reserve recognizes the potential for overlap or duplicated data between the FR 2420 and FR 2052 with respect to several line items. However, the FR 2420 and FR 2052 reports are, or would be, issued under separate, non-overlapping authorities where the purpose and use of the reports are also completely separate. Therefore, the Federal Reserve will retain the FR 2052a ''Funding Pricing'' information (section 16) and will endeavor to reduce reporting burden wherever possible in the future. As such, the Federal Reserve has removed from the FR 2052b the ''Wholesale Funding Pricing'' information (section 20) to alleviate reporting burden and because the Federal Reserve not believe collecting this information from FR 2052b filers is essential for monitoring their liquidity risk.

E. Ad-Hoc Reporting and Future Anticipated Initiatives

Three commenters requested clarification on the implementation and advanced notification of the ad-hoc requests. Commenters also requested that the Federal Reserve clarify its expectations as to the standard to which reporters will be held when providing responses, and also inquired as to certification requirements of ad-hoc requests. One commenter also noted that it was unclear whether there was a relationship between the FR 2052a report, the ad-hoc reporting, the quantitative impact study (QIS) [8] process, and supervisory requests for liquidity information. One commenter requested that the Federal Reserve clarify the scope of operations that must be included in response to each ad-hoc request. This commenter stated that introduction of any new data requests should be determined after consultation with the industry and consideration of the volume and complexity of the new requests. One commenter requested that any ad-hoc requests be subject to a notice and comment process.

The Federal Reserve notes that the initial **Federal Register** notice requested comment on the Federal Reserve's intention to make ad-hoc requests, included the approximate number of burden hours that would be involved, and indicated that institutions would be given notice prior to the collection with an opportunity to respond. As proposed, the Federal Reserve will make requests for additional liquidity risk information on an ad-hoc basis, used to develop modifications to the FR 2052a for future proposals. The Federal Reserve believes these potential modifications could allow for more comprehensive and effective liquidity risk monitoring going forward and assist with aligning the reports with any final LCR regulations, as appropriate. The Federal Reserve notes that the construct of the Basel QIS template is different than the FR 2052a. Although there are some similar data elements utilized in the Basel QIS and the FR 2052a, the methodology and definitions for the Basel QIS has changed to reflect the Basel III Revised Liquidity Framework.[9]

Furthermore, the scope of the ad-hoc requests would be tailored to individual institutions. For domestic BHCs, it would include global operations with a separate report for material legal entities. For FBOs it would include U.S. operations of the FBO with separate reports for the material legal entities. Material entities in both cases would be defined as entities that pose liquidity risk, provide liquidity support, or depend on liquidity support from affiliates. In response to any new data requests and ad-hoc requests, the Federal Reserve anticipates revising the FR2052a to incorporate additional liquidity reporting requirements as they are developed with observations gained from the ad-hoc reporting. Thus, the ad-hoc reporting process will be implemented as proposed.

[8] Basel Committee on Banking Supervision (BCBS) quantitative impact study (QIS) for the international version of the Liquidity Coverage Ratio (LCR).

[9] ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013), available at *http://www.bis.org/publ/bcbs238.htm.*

Specific Data Item Comments

Definitions

There were various questions from commenters regarding definitions or requests for expanded instructions. Most of the questions related to line item definitions in the FR 2052 reports and a few questions related to sizing of material entities for liquidity reporting. In response, the Federal Reserve reviewed data definitions and have adjusted or clarified data items and associated instructions, as appropriate. As discussed above, definitions used on the reports would align with other U.S. rules as they are finalized to minimize any potential overlap. Also, the Federal Reserve notes that some data items in the proposed FR 2052b form are not reported through the current collection of the Large and Regional Institutions Liquidity Monitoring Report, such as ''Deposit Balances'' and ''Undrawn Commitments and Contingent Liquidity Needs.'' Therefore, the Federal Reserve is temporarily exempting FR 2052b filers from reporting most of the ''Deposit Balances'' and entire ''Undrawn Commitments and Contingent Liquidity Needs'' sections [10] until the proposed LCR is finalized, at which time the Federal Reserve anticipates proposing that the FR 2052b instructions for these data items be modified to closely align with a final LCR rule.

One commenter requested clarification on whether data item FHLB Borrowing (item 2.20 in the FR 2052a, and 5.1 in the FR 2052b) should be reported at book value or par value. The Federal Reserve clarified the instructions to note that FHLB Borrowing should be reported as the amount of borrowing outstanding based on remaining contractual maturity. This definition is similar to the definition of Federal Home Loan Bank Advances in item RC–M 5.a of the FFIEC 031 and 041 (Call Reports).

One commenter requested clarification on whether Long Term Debt Structured, Not Structured, and Govt. Supported (items 8.4–8.6 in the FR 2052a, and 7.3 in the FR 2052b) should include any fair value hedges associated with long-term debt, in order that the debt would be reported at fair value, not face value. The Federal Reserve clarified the instructions to note that institutions should not include fair value hedges in the reporting of long-term debt so that the debt is reported at fair value. Values reported as Long Term Debt Structured, Not Structured and Govt. Supported (items 8.4 through 8.6 in the FR 2052a, and 7.3 in the FR 2052b) should represent the undiscounted cash repayment obligation due, and should be reported in the maturity column that corresponds with the timing of the contractual repayment obligation. In addition, if specific derivative transactions, excluding those related to fair value hedging, have cash flow characteristics equivalent to long term debt (e.g., a bullet cash repayment obligation at maturity) and are classified as debt under U.S. Generally accepted accounting principles, institutions should report the cash repayment obligation associated with the derivative in the appropriate maturity column.

FR 2052b Items

One commenter requested that the Federal Reserve confirm that an FBO would limit its responses to the information requested in the consolidated reporting tab and not provide any of the information requested in either the parent company only or contingency-pricing reporting tabs. As noted above, FBOs that do not meet the FR 2052b criteria are not required submit the FR 2052b report.

A commenter requested clarification on the specific types of transactions included in section 6 [11] of the FR 2052b, and whether customer and counterparty repurchase transactions, which may have different behavioral characteristics, should be reported in separate line items. One commenter suggested that section 6 segregate repurchase transactions that are a part of a customer relationship where deposit balances in excess of customer needs are swept into a repurchase transaction. The commenter stated that this would distinguish between wholesale repurchase agreements initiated by a bank with a large counterparty to meet overall funding needs and repurchase transactions that arise during the ordinary course of business through customer needs. Another commenter noted that many firms that would be required to file the FR 2052b engage in relatively low volumes of repurchase and reverse repurchase transactions and do not have the system capabilities to report those transactions with the granularity required by the information request. The commenter requested that the Federal Reserve consider exempting firms that would be required to file the FR 2052b that engage in de minimis amounts of these transactions or consider a more tailored approach that would not impose significant cost for lower benefit. The Federal Reserve recognizes the difference in profile of such transactions, but does not believe the difference is significant enough to justify creating two categories. Furthermore, the Federal Reserve recognizes not all firms that would be required to file the FR 2052b engage in significant amounts of repurchase and reverse repurchase transactions and that the monitoring of the activity is relevant to the liquidity monitoring of the firms. Having considered the comments carefully, the Federal Reserve believes that the granularity required in Section 6 is appropriate.

One commenter requested clarification on whether to report Secured Deposits (item 5.3) in FR 2052b net of deposits covered by FDIC insurance. The Federal Reserve clarified the FR 2052b instructions to note that an institution should report only the portion of public deposits that are secured by collateral. For example, if a portion of a deposit account is covered by FDIC insurance, and thus not secured by collateral, institutions should not include that portion of the deposit in Secured Deposits.

Several commenters requested clarification on the reporting of loans and leases (items 4.1 through 4.9) in the FR 2052b that could be monetized within a reasonable period. First, commenters requested that the Federal Reserve clarify where to report loan amounts that may be eligible to be pledged to the FHLB or Federal Reserve, but have not been pledged, and thus no actual borrowing capacity yet been created. The Federal Reserve notes, as specified in the instructions, that reported amounts would be limited to collateral-based borrowing capacity actually created (assets already pledged), and companies would not include assets based only on the fact that they could create borrowing capacity at the FHLB or Federal Reserve in the FHLB and Central Bank Borrowing columns. Firms required to file the FR 2052b are welcome to report the potential secured borrowing capacity of such assets in the ''notes'' section or in the ''Available for Sale, Securitization and/or Repo'' section if the loans could reasonably be expected to create such capacity within a reasonable amount of time, generally in 3 months or less.

One commenter suggested it could be overly burdensome to establish an accurate market value for loan and lease assets that should be valued for inclusion in the ''Available for Sale'' or ''Other Secured Financing'' columns.

[10] At this time, respondents that file the 2052b are not required complete line items 10.1 through 10.3, and items 12.1 through 12.5.

[11] Section 6 ''Repurchase Transactions'' in Consolidated Tab.

The proposed instructions for the FR 2052b definition state that ''the market value can be interpreted as the book value less a haircut for the sale.'' The Federal Reserve modified the FR 2052b definition to note that the haircut applied to loans and leases can be a based on readily available market-based metrics for the general asset type. For example, publicly available loan and lease haircuts provided by the FHLB or Discount Window could be used as a benchmark as a reasonable estimate. The expectation is not that a bank's entire loan book be valued and included in section 4, rather, that reporting be limited to those assets targeted for potential monetization within a 90-day period, under normal market conditions.

One commenter requested clarification regarding the method required to calculate the lendable value of unencumbered securities (items 3.1 through 3.9) in the FR 2052b. The commenter has noted that determining the ''Lendable value'' would be dependent upon the source providing liquidity for the security. The Federal Reserve believes that some judgment is involved as assets can be utilized in multiple different markets. Lendable value should be a combination of the market value less applicable 'haircuts.' Haircuts should consider factors such as liquidity, credit and market risks of the securities, firm specific sources available for securitized borrowing, current market haircuts and firm specific factors which may decrease or increase current market haircuts.

Two commenters noted that it is impractical for mid-sized banks to report pricing on unsecured funding issued and outstanding such that banks would report pricing on that debt over its life through maturity (section 21 of the FR 2052b). One of these commenters recommended that the requirement for banks with total consolidated assets less than $50 billion to provide a funding curve be eliminated. Another commenter recommended that this section ask for indications for unsecured wholesale term debt transactions only. The Federal Reserve recognizes the challenges of calculating weighted average funding in a wide time horizon (section 20 of the FR 2052b) and has modified the maturity bucket in the unsecured funding pricing section to 5 years.

Other Items

Two commenters noted that it is not easy for institutions with assets between $10 billion and $50 billion to segregate the categories of retail, Small and Medium Enterprises (SME), financial institution, and non-financial institution, and requested confirmation that reasonable segmentation approaches would be sufficient for these institutions (section 10 of the FR 2052b). One of these commenters also noted that the requirement to identify stable versus less stable deposits may require data not widely available at institutions of this size. A commenter requested that this flexibility be included in the instructions for mid-sized institutions as it could reduce implementation expense. The commenter recommended that these mid-sized banks be allowed to satisfy the requirements on a best efforts basis through reasonable use of their existing deposit product and existing line of business or segment reporting definitions without the penalty of defaulting to the worst category. The commenter also requested clarification of the meaning of interest in the category of ''term deposits with a withdrawal penalty greater than loss of interest'' and recommended that a more comprehensive definition of the withdrawal penalty criteria be provided. The Federal Reserve notes that some sections and data items in the proposed FR 2052b are not collected through the current version of the Large and Regional Institutions Liquidity Monitoring Report, such as ''Deposit Balances'' and ''Undrawn Commitments and Contingent Liquidity Needs.'' Therefore, as mentioned above, the Federal Reserve is temporarily exempting FR 2052b filers from reporting most of the ''Deposit Balances'' and the entire ''Undrawn Commitments and Contingent Liquidity Needs'' sections [12] until the proposed LCR is finalized, at which time the Federal Reserve anticipates the FR 2052b instructions for these data items would be proposed for modification to closely align with a final LCR rule.

One commenter noted that banks with less than $50 billion in total consolidated assets may not have an existing reporting infrastructure to measure the segregations of unfunded commitments precisely as defined (section 12 of the FR 2052b). The Federal Reserve observes that the proposed definitions in the FR 2052b did not explicitly address the case of comingled facility types. The commenter recommended that the FR 2052 reporting forms, proposed LCR and other liquidity-related regulations share an equivalent and more detailed definition of liquidity facility. The commenter recommended that the Federal Reserve avoid encouraging a blending of liquidity and credit facilities into a single facility categorization. The commenter also recommended that the Federal Reserve allow flexibility for mid-sized organizations in reporting SME versus commercial. This commenter requested that mid-sized organizations be permitted to use a manual tracking process or be provided upfront investment in training and infrastructure to track the exposures by category. Another commenter noted that undrawn credit facilities and undrawn liquidity facilities are not mutually exclusive product categories provided to clients and that it may be impossible to distinguish between them (section 12 of the FR 2052b). The commenter requested that the Federal Reserve provide further guidance on undrawn commitment segmentation and also allow permit the institutions the flexibility to categorize commitments based on either existing line of business segmentation or existing data at that institution. The Federal Reserve agrees with the comments and, as mentioned above, is temporarily exempting FR 2052b filers from reporting the entire ''Undrawn Commitments and Contingent Liquidity Needs'' section until the proposed LCR is finalized, at which time the Federal Reserve anticipates that modification of the FR 2052b instructions for these data items would be proposed to closely align with a final LCR rule.

[12] FR 2052b filers will not be required fill out items 10.1 through 10.3, and items 12.1 through 12.5 at this time.

Board of Governors of the Federal Reserve System, August 11, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–19323 Filed 8–14–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices

of the Board of Governors. Comments must be received not later than September 2, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Kimberly L. Johnson, Naples, Florida, as co-trustee of the RFS 2010 Irrevocable Trust F/B/O Ralph C. Stayer, together with Lisa M. Reilly, Naples, Florida, as the co-trustee of the Shelly A. Stayer 2010 Childrens Trust,* to be added to the Stayer Family Control Group; to acquire voting shares of Hometown Bancorp, Ltd., and indirectly acquire voting shares of Hometown Bank, both in Fond du Lac, Wisconsin.

Board of Governors of the Federal Reserve System, August 12, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–19375 Filed 8–14–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR part 238) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Charles T. Wittwer,* Colorado Springs, Colorado; to acquire voting shares of Grand Mountain Bancshares, Inc., and thereby indirectly acquire voting shares of Grand Mountain Bank, FSB, both in Granby, Colorado.

Board of Governors of the Federal Reserve System, August 12, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–19376 Filed 8–14–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-FTR–2014–06; Docket No. 2014–0002; Sequence 29]

Maximum Per Diem Rates for the Continental United States (CONUS)

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

ACTION: Notice of GSA Per Diem Bulletin FTR 15–01, Fiscal Year (FY) 2015 Continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA) Fiscal Year (FY) 2015 per diem review has resulted in lodging and meal allowance changes for certain locations within the Continental United States (CONUS) to provide for reimbursement of Federal employees' expenses covered by per diem.

DATES: *Effective:* August 15, 2014.

Applicability: This notice applies to travel performed on or after October 1, 2014 through September 30, 2015.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–208–7642, or by email at *travelpolicy@gsa.gov.* Please cite Notice of GSA Per Diem Bulletin FTR 15–01.

SUPPLEMENTARY INFORMATION:

Background: GSA identified two new non-standard areas (NSAs): Kayenta, AZ (Navajo County), and San Angelo, TX (Tom Green County). Elmore County, ID is now included with the Sun Valley, ID NSA location. The Middlebury, VT (Addison County) NSA has been combined with the Burlington/St. Albans, VT (Chittenden/Franklin Counties) NSA. Finally, the Manhattan NSA has been renamed New York City, which more accurately recognizes that GSA no longer sets rates for individual New York City boroughs as had been done in the past.

The standard lodging per diem rate will remain at $83. The meals and incidental expense tiers also remain unchanged for FY 2014 and range from $46–$71.

The CONUS per diem rates prescribed in Bulletin 15–01 may be found at *www.gsa.gov/perdiem.* GSA bases the lodging rates on the average daily rate that the lodging industry reports to an independent organization. If a lodging rate or a per diem rate is insufficient to meet necessary expenses in any given location, Federal executive agencies can request that GSA review that location. Please review numbers five and six of GSA's per diem Frequently Asked Questions at (*www.gsa.gov/perdiemfaqs*) for more information on the special review process.

In addition, the Federal Travel Regulation allows for actual expense reimbursement as provided in §§ 301–11.300 through 301–11.306.

GSA issues and publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register,** such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 7, 2014.

Carolyn Austin-Diggs,

Acting Deputy Associate Administrator, Office of Asset and Transportation Management.

[FR Doc. 2014–19078 Filed 8–14–14; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Nuclear Metals Inc. facility in West Concord, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

On July 11, 2014, as provided for under the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the facility owned by Nuclear Metals, Inc. (or a subsequent owner) in West Concord, Massachusetts, during the period from January 1, 1980, through December 31, 1990, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on August 10, 2014. Therefore, beginning on August 10, 2014, members of this class of employees, defined as reported in this notice, became members of the SEC.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2014–19378 Filed 8–14–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[CDC–2014–0013, Docket Number NIOSH–274]

NIOSH Current Intelligence Bulletin: *Promoting Health and Preventing Disease and Injury through Workplace Tobacco Policies*

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft document for public comment.

SUMMARY: The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention announces the availability of a draft Current Intelligence Bulletin (CIB) entitled NIOSH Current Intelligence Bulletin: *Promoting Health and Preventing Disease and Injury through Workplace Tobacco Policies* for public comment. To view the notice and related materials, visit *http://www.regulations.gov* and enter CDC–2014–0013 in the search field and click ''Search.''

Public comment period: Comments must be received September 15, 2014.

ADDRESSES: You may submit comments, identified by CDC–2014–0013 and Docket Number NIOSH–274, by either of the following two methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* Follow the instructions for submitting comments.
- Mail: National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2014–0013; NIOSH–274]. All relevant comments received will be posted without change *http://www.regulations.gov,* including any personal information provided. All electronic comments should be formatted as Microsoft Word. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 109, Cincinnati, OH 45226–1998.

SUPPLEMENTARY INFORMATION: The purpose of the public review of the draft document is to help assure that the final version of the NIOSH *Current Intelligence Bulletin* meets current quality standards before it is disseminated.

Overall Questions

(1) Does the draft CIB provide useful information and recommendations?

(2) Is it reasonably clear and comprehensible?

(3) Does it include any technical errors or factual inaccuracies?

(4) Are there any critical omissions?

(5) Does it include any unnecessary information that should be deleted?

(6) Are any of the conclusions inappropriate?

(7) Are any of the recommendations inappropriate?

Background: NIOSH has previously published two formal *Current Intelligence Bulletins* entirely devoted to the issue of tobacco use. The first—*CIB 31: Adverse Health Effects of Smoking and the Occupational Environment* [DHEW (NIOSH) Publication Number 79–122]—outlined several ways in which smoking interacts with other workplace exposures to increase risk of disease and injury among workers. That document recommended that smoking be curtailed in workplaces where those other hazards are present and that worker exposure to those other occupational hazards be controlled *http://www.cdc.gov/niosh/docs/1970/79122_31.html.* The second—*CIB* 54: Environmental Tobacco Smoke in the Workplace; Lung Cancer and other Health Effects [DHHS (NIOSH) Publication No. 91–108]—focused on secondhand smoke in the workplace as a cause of cancer and cardiovascular disease. That document recommended eliminating tobacco smoking in the workplace as the best preventive approach *http://www.cdc.gov/niosh/docs/91–108/.*

NIOSH has prepared a current draft *CIB: Promoting Health and Preventing Disease and Injury through Workplace Tobacco Policies* for anticipated dissemination during the 50th anniversary year of the Surgeon General's first report on the health consequences of smoking published in 1964. The draft *CIB* reflects a ''strategy integrating occupational safety and health protection with health promotion to prevent worker injury and illness and to advance health and well-being'' [see *http://www.cdc.gov/niosh/TWH/totalhealth.html*], embodied by NIOSH in a recently launched Total Worker Health™ (TWH™) Program.

FOR FURTHER INFORMATION CONTACT: R.M. Castellan, NIOSH, Division of Respiratory Disease Studies, Mailstop H–2900, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888. Phone: (304) 285–6117.

Dated: August 7, 2014.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2014–19384 Filed 8–14–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–48]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of

the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 15, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov* .

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Hospital Conditions of Participation and Supporting Regulations; *Use:* The information collection requirements described in this information collection request are needed to implement the Medicare and Medicaid conditions of participation (CoP) for 4,890 accredited and non-accredited hospitals and an additional 101 critical access hospitals (CAHs) that have distinct part psychiatric or rehabilitation units (DPUs). CAHs that have DPUs must comply with all of the hospital CoPs on these units. This package reflects the paperwork burden for a total of 4,991 (that is, 4,890 hospitals and 101 CAHs which include 81 CAHs that have psychiatric DPUs and 20 CAHs that have rehabilitation DPUs). The information collection requirements for the remaining 1,183 CAHs have been reported in a separate package under CMS–10239.

The CoPs and accompanying requirements specified in the supporting regulations are used by our surveyors as a basis for determining whether a hospital qualifies for a provider agreement under Medicare and Medicaid. CMS and the health care industry believe that the availability to the facility of the type of records and general content of records, which the supporting regulations specify, is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. Subsequent to publication of the 60-day **Federal Register** notice (January 31, 2014; 79 FR 5417), the burden has been recalculated. *Form Number:* CMS–R–48 (OMB control number: 0938–0328); *Frequency:* Yearly; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 4,991; *Total Annual Responses:* 17,279,717; Total Annual Hours: 14,424,655. (For policy questions regarding this collection contact Scott Cooper at 410–786–9465.)

Dated: August 11, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–19260 Filed 8–14–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1279]

Pilot Program for Qualification of Medical Device Development Tools

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is soliciting proposals to participate in a pilot program for Medical Device Development Tools (MDDT) qualification (MDDT Pilot Program). Under the MDDT Pilot Program, FDA intends to work together with developers of tools that meet the criteria for the proposed program, to determine whether certain tools may be developed and qualified in order to facilitate more predictable, efficient, and transparent regulatory evaluation when MDDTs are used to generate valid scientific evidence for medical device premarket applications.

DATES: FDA will begin accepting nominations for participation in the voluntary MDDT Pilot Program *September 15, 2014.*

FOR FURTHER INFORMATION CONTACT: Joan Adams-White, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3650, Silver Spring, MD 20993–0002, 301–796–5421, *Joannie.Adams-White@fda.hhs.gov;* or Kathryn O'Callaghan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3614, Silver Spring, MD 20993–0002, 301–796–6349, *Kathryn.ocallaghan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 14, 2013 (78 FR 68459), the Food and Drug Administration (FDA) announced the availability of the draft guidance entitled ''Medical Device Development Tools'' (*http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm374427.htm*) (MDDT draft guidance). When finalized, the draft guidance will represent FDA's current thinking on qualification of MDDTs for use in device development and evaluation. The proposed MDDT qualification process is intended to support the development of MDDTs—tools that manufacturers and FDA use to assess and measure the performance,

safety, and effectiveness of medical devices. MDDT tools qualified by FDA can then be relied upon by the medical device industry in support of their device submissions to the Agency, potentially reducing time and other resources needed to develop new products. This proposed voluntary qualification process is intended to enable submitters of MDDT proposals chosen for this pilot program to work closely with FDA to determine the amount and type of evidence and other information needed to support qualification for a specific tool and context of use.

The anticipated benefits of the proposed MDDT qualification process include facilitating timely development of tools that manufacturers and FDA use to assess and measure the performance, safety, and effectiveness of medical devices. FDA expects that manufacturers can better rely on MDDTs that have been FDA reviewed and accepted (qualified), and made available through this voluntary program, which supports innovative medical device development and promotes regulatory science. The proposed MDDT qualification process supports the FDA's plan to advance regulatory science—the science of developing new tools, methods and approaches to assess the safety, effectiveness, performance, and quality of medical devices. Advancements in regulatory science help to bridge the gap between research and discovery of medical devices and the actual delivery of the device to patients. The proposed qualification process also supports FDA's strategic priority of strengthening the clinical trial enterprise by potentially increasing the efficiency of the clinical studies. Finally, this proposed qualification process supports FDA's strategic priority actions to strike the right balance between premarket and postmarket data collection, leading to earlier access to beneficial innovative technologies for patients in the United States. For example, an MDDT qualified for use as an intermediate or surrogate endpoint could facilitate more efficient development and evaluation of devices, especially for those intended to address unmet medical needs.

FDA is proposing a new voluntary MDDT Pilot Program. Information learned and experiences gained from the MDDT Pilot Program will help inform the final guidance document and processes. FDA plans to prioritize proposals based on public health need or potential to impact multiple device development programs. Additionally, for the purposes of the pilot, proposals are expected to be prioritized based on feasibility, timeline, and FDA resources. See section II.B. Appropriate Candidates, for details.

II. MDDT Pilot Program

FDA has developed a pilot program for interested tool developers. This document outlines: (1) The guiding principles underlying the MDDT Pilot Program, (2) appropriate candidates for the MDDT Pilot Program, and (3) the procedures FDA intends to follow in the MDDT Pilot Program.

A. Guiding Principles

The following basic principles underlie the MDDT Pilot Program described in this document. FDA intends that these principles create a common understanding between the submitter and FDA about the goals and parameters of the MDDT Pilot Program:

1. For qualified MDDTs, FDA intends to make public the context of use, summary of evidence, and basis of the qualification determination (analogous to summaries of approved devices). FDA will keep proprietary information confidential. Submitters must consent to make MDDTs accessible to the public for use (e.g. through sales, open source, etc.), and not restrict to certain private entities, such as a single manufacturer.

2. FDA and the MDDT Pilot Program places no requirements on licensing/cost/degree of access to intellectual property associated with a tool, nor does it consider restrictions related to patent claims. An MDDT submitter may include and protect proprietary methods as long as access to the tool is not restricted to certain private entities.

3. Participating in this MDDT Pilot Program does not guarantee qualification of an MDDT, nor is a submitter precluded from withdrawing from the MDDT Pilot Program.

4. Due to FDA resource constraints, FDA intends to limit the MDDT Pilot Program to no more than 15 candidates.

B. Appropriate Candidates

The process for MDDT qualification can be initiated in one of three ways: (1) A tool developer chooses to pursue qualification for his or her tool to allow for use across multiple device development programs; (2) need and interest in an area is determined by individual or consortia of stakeholders (may include academia, industry, medical societies); or (3) FDA identifies an area of need and calls for development of tools in a specific area.

Appropriate candidates for the MDDT Pilot Program are:

1. Tools which fit into one of the following categories:

- Clinical Outcome Assessments such as patient-reported outcomes or clinical outcomes based on clearly defined subjective clinical decision making as a measure of treatment benefit;
- Biomarker Tests such as in vitro laboratory tests or medical imaging methods, or other objective measurement methods used to detect or measure a biomarker; or
- Nonclinical Assessment Models such as in vitro (''bench'') models, animal models, or computer models to measure a parameter of interest or to substitute for another generally accepted test or instrument.

2. Tools which address the following factors:

- Public health need met by one or more of the following:
  - Context of use includes life-threatening or serious chronic diseases/conditions, or both;
  - No/poor alternatives or unmet scientific need;
  - Innovative technology with no established paradigm for regulatory assessment; or
  - Gain major efficiencies in device development and evaluation time.
- Scope of impact:
  - Potential to impact multiple device development programs; or
  - Potential to impact multiple device sponsors.

3. FDA intends to prioritize candidates for the pilot program based on the following factors:

- Tool readiness: Does the tool exist in prototype or final form?
- Acceptance of proposed context of use: Does available information support acceptance of the tool principle/method of measurement for the proposed context of use, or for any use?
- Timeline: What is the expected timeline to submission of a qualification package?
- Potential for public health impact: Does the tool address an unmet public health need or significantly reduce product development timelines, or both?

FDA encourages any interested developers who believe their tool is an appropriate candidate for the MDDT Pilot Program to contact FDA before initiating the procedures referenced under the following section titled ''Procedures.''

C. Procedures

FDA has developed the following procedures to ensure adequate information to assess a candidate's suitability for the MDDT Pilot Program is provided to FDA without creating a burdensome new application process:

1. *Nomination.* The submitter may nominate his or her tool for

participation in the MDDT Pilot Program by submitting a proposal to *MDDT@fda.hhs.gov.* FDA intends to acknowledge receipt of nominations via email.

A submitter's proposal for the MDDT Pilot Program should include the following information to assist FDA in processing and responding to nominations:

• A cover letter and a brief statement explaining why the tool is an appropriate candidate for the MDDT Pilot Program as described under section II., B. Appropriate Candidates; and

• A description of the tool, the proposed context of use, a synopsis of the available evidence and plans for additional evidence gathering, and an assessment of the advantages or disadvantages related to the capabilities and limitations of the tool for the proposed context of use.

2. *Submitter Notification.* FDA intends to notify the submitter via email whether or not the tool is an appropriate candidate for the MDDT Pilot Program within approximately 30 days of receipt of the complete information.

3. *Pre-qualification Plan.* If the nominee is deemed an appropriate candidate, the submitter will be notified by FDA and invited to submit a pre-qualification plan within approximately 30 days of being notified by the FDA that its nominee was accepted. One way to present the pre-qualification plan is included in Appendix 1 of the MDDT draft guidance. FDA recommends the pre-qualification and qualification plans be submitted in accordance with FDA guidance entitled ''Medical Devices: Pre-Submission Program and Meetings with FDA Staff'' (*www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm311176.pdf*) as the process for the MDDT pilot program is expected to be modeled after the Pre-Submission Program.

4. *Pre-qualification Meeting.* FDA intends to meet with the submitter, either in person or by phone, in accordance with the process outlined in the FDA guidance on ''Medical Devices: Pre-Submission Programs and Meetings With FDA Staff.'' The qualification review team (which may include FDA as well as external expertise, where appropriate) will interact with the submitter to identify the amount and type of data or information needed for qualification of the tool for the proposed context of use.

5. *FDA Review.* Under the MDDT Pilot Program, the Agency intends to work interactively with submitters as follows:

• Where appropriate, FDA may seek input from external individuals or groups for specific expertise, consistent with all applicable statutory and regulatory requirements, including those respecting confidentiality.

• During the process for MDDT qualification, FDA intends to interact with submitters to efficiently determine the amount and type of information needed to support qualification for a specific tool and context of use, and as needed for clarification or to request additional information.

• When the submitter has the data and information necessary for a complete qualification package, they may submit it to justify qualification of the tool for the proposed context of use. FDA intends to hold a qualification meeting or teleconference to facilitate discussion once the package has been reviewed.

D. Duration of the MDDT Pilot Program

FDA intends to accept requests for participation in the MDDT Pilot Program until such time that the MDDT draft guidance is finalized. FDA may decide to terminate the MDDT Pilot Program at any time or extend the MDDT Pilot Program. The decision to terminate or extend the MDDT Pilot Program will be announced in the **Federal Register**. FDA may also decide to modify the MDDT Pilot Program while it is in effect. Any significant modifications will also be announced in the **Federal Register**.

E. Evaluation

FDA intends to use the experience gained from the MDDT Pilot Program to inform the final version of the MDDT guidance and processes.

III. Paperwork Reduction Act of 1995

This notice contains information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078 (Investigative Device Exemption); the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231 (Premarket Approval); the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120 (Premarket Notification); and the collections of information in 21 CFR part 809 have been approved under OMB control number 0910–0485.

Dated: August 11, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–19360 Filed 8–14–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Grants to Promote Diversity.

Date: September 16, 2014.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–266–NIDDK Program Project (P01)–ANCA Glomerulonephritis.

Date: October 1, 2014.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; Ancillary Study to the Intestinal Stem Cell Consortium.

Date: October 2, 2014.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 11, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–19319 Filed 8–14–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34).

Date: September 8, 2014.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3124, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3193, *uday.shankar@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Clinical Trial Planning Grant (R34).

Date: September 10, 2014.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3124, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3193, *uday.shankar@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–19321 Filed 8–14–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 MRI-Optical Review (2015/01).

Date: November 11–13, 2014.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton University City, 3549 Chestnut Street, Philadelphia, PA 19104.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: August 11, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–19320 Filed 8–14–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Primary and Behavioral Health Care Integration Program (OMB No. 0930–0340)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services, (CMHS) is requesting a revision from the Office of Management and Budget (OMB) for data collection activities associated with their Primary and Behavioral Health Care Integration (PBHCI) Program. Specifically, SAMHSA is requesting approval to only collect information on physical health indicators through a supplemental module to the TRansforming ACcountability (TRAC) System and grantee quarterly reports. The current data collection (OMB No. 09300340) expires on September 30, 2014.

The purpose of the PBHCI grant program is to improve the overall wellness and physical health status of people with serious mental illnesses (SMI), including individuals with co-occurring substance use disorders, by supporting communities to coordinate and integrate primary care services into publicly-funded community mental health and other community-based behavioral health settings. The program's goal is to improve the physical health status of adults with serious mental illnesses (and those with co-occurring substance use disorders) who have or are at risk for co-occurring primary care conditions and chronic diseases. The program's objective is to

support the triple aim of improving the health of those with SMI; enhancing the client's experience of care (including quality, access, and reliability); and reducing/controlling the per capita cost of care.

This information collection is needed to provide SAMHSA with sufficient information to monitor grantee performance and to assess whether integrated primary care services produce improvements in the physical health of the SMI population receiving services from community-based behavioral health agencies.

Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa-4)—Data Collection. Authorization for the PBHCI program is provided under Section 5604 of H.R. 3590, the Affordable Care Act (ACA), which authorizes SAMHSA to provide awards for the co-location of primary and specialty care in community-based mental health settings.

The table below reflects the annualized hourly burden.

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response per respondent	Total hour burden
Client-level interview—Physical Health Indicators	14,000	2	28,000	.08	2,240
Grantee Quarterly Report	70	4	280	2	560
Total	14,070		28,280		2,800

Written comments and recommendations concerning the proposed information collection should be sent by September 15, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–19408 Filed 8–14–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0037]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on September 22, 2014, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, September 22, 2014, from 2:00 p.m. to 5:00 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held both in person in Washington, DC at the U.S. Access Board, 1331 F Street NW., Suite 800, and via online forum (URL will be posted on the Privacy Office Web site in advance of the meeting at *www.dhs.gov/privacy*). Persons attending meetings in the Access Board's conference space are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/the-board/policies/fragrance-free-environment* for more information). For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the ''Supplementary Information'' section below. A public comment period will be held during the meeting from 4:45 p.m.–5:00 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Shannon Ballard at the address provided below or sign up at the registration table on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by September 15, 2014. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2014–0037) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2014–0037) in the subject line of the message.
- *Fax:* (202) 343–4010.
- Mail: Shannon Ballard, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2014–0037). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please bring a government issued photo I.D. and plan to arrive at 1331 F Street NW., Suite 800, Washington, DC no later than 1:50 p.m. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov.* Advance registration is voluntary. The

Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2014–0037.

FOR FURTHER INFORMATION CONTACT: Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Proposed Agenda

During the meeting, the Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office. DHS subject matter experts plan to brief the Committee on DHS cybersecurity activities and updates on implementation of the DHS Data Framework (Big Data). The Committee will discuss draft recommendations for DHS to consider for privacy best practices for notice and transparency related to DHS' use of Big Data and the use of audit mechanisms in the oversight process. The final agenda will be posted on or before September 15, 2014, on the Committee's Web site at *www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the Federal Records Act, 44 U.S.C. 3101; the Federal Advisory Committee Act, 5 U.S.C. Appendix; and the Privacy Act of 1974, 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL-002 Mailing and Other Lists System of Records referenced above.

Dated: August 4, 2014.

Karen Neuman,

Chief Privacy Officer. Department of Homeland Security.

[FR Doc. 2014–19358 Filed 8–14–14; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0015]

RIN 1660–AA79

Notice of Adjustment of Legitimate Amount in Dispute for the Dispute Resolution Pilot Program for Public Assistance Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of an increase of the legitimate amount in dispute for the Dispute Resolution Pilot Program for Public Assistance Appeals for disasters declared on or after October 30, 2012.

DATES: *Effective Date:* August 15, 2014.

FOR FURTHER INFORMATION CONTACT: William Roche, Public Assistance Division Director, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, Phone: (202) 646–3834 or Email: *william.roche@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Sandy Recovery Improvement Act of 2013, Public Law 113–2, 127 Stat. 43 (Jan. 29, 2013), 42 U.S.C. 5189a note, prescribes that the Administrator shall annually adjust the legitimate amount in dispute under the Dispute Resolution Pilot Program to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor. See 44 CFR 206.210(c)(1).

FEMA gives notice of an increase in the legitimate amount in dispute under the Dispute Resolution Pilot Program for Public Assistance Appeals to $1,015,000 for all disasters declared on or after October 30, 2012.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers provided by The Bureau of Labor Statistics of the U.S. Department of Labor. The 2013 annual average percent change from the previous year used in the adjustment is 1.5 percent.

Dated: June 10, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–18645 Filed 8–14–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; AIR FORCE: Ms. Connie Lotfi, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; COMMERCE: Ms. Linda Steward, Department of Commerce, Office of Real Estate, 1401 Constitution Ave. NW., Room 1036, Washington, DC 20230, (202) 482–1770; NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202) 358–1124 NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: August 7, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/15/2014

Suitable/Available Properties

Building

Maryland

Building 085C,
Storage Shed #085C
1202B0085C/08940 RPUID #03.52231
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430006
Status: Excess
Comments: 1,543 sq. ft. (3400); Storage; need new roof; HVAC/electrical/plumbing repairs needed; secured area; contact Agriculture for more information.

Building 053,
Biological Greenhouse #053
1200B00053/08940 RPUID #03.52077
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430007
Status: Excess
Comments: 1,453 sq. ft. (3400); storage; HVAC/electrical/plumbing repairs needed; secured area; contact Agriculture for more information.

Building 1206,
Animal Building #1206
1203B01206/08940 RPUID #03.52604
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430008
Status: Excess
Comments: 1,543 sq. ft. (3400); storage; HVAC/electrical/plumbing repairs needed; secured area; contact Agriculture for more information.

Building 1420,
Laboratory #1420
1203B01420/08940 RPUID #03.52707

Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430009
Status: Excess
Comments: 1,543 sq. ft. (3,400); lab; new roof need; HVAC/electrical/plumbing repairs needed; secured area; contact Agriculture for more information.

Building 1145,
Animal Building #1145
1203B01145/08940 RPUID #03.52549
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430010
Status: Excess
Comments: 1,543 sq. ft. (3,400); HVAC/electrical/plumbing repairs needed; secured area; contact Agriculture for more information.

Building 018, Residence 018
RPUID: 03.52045; 1200B00018/08940
Beltsville, MD 02705
Landholding Agency: Agriculture
Property Number: 15201430011
Status: Excess
Comments: 1,543 sq. ft. (3,400); residential; fair structural condition; new roof needed; HVAC/utility system needed; secured area; contact Agriculture for more information.

Building 1204,
Animal Pen #1204
1203B01204/08940 RPUID #03.52602
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430012
Status: Excess
Comments: 1,543 (3400); storage; repairs needed; secured area; contact Agriculture for more information.

Building 465—Screen Building
1203B00465/08940 RPUID #03.52452
Beltsville, MD 20705
Landholding Agency: Agriculture
Property Number: 15201430013
Status: Excess
Comments: 4,404 sq. ft.; greenhouse/research; new roof needed; HVAC/plumbing/electrical repairs needed; secured area; contact Agriculture for more information.

Unsuitable Properties

Building

California

NOAA's National Marine
Fisheries Service
8604 La Jolla Shores Dr.
San Diego, CA 92038
Landholding Agency: Commerce
Property Number: 27201430001
Status: Unutilized
Comments: Documented deficiencies: Property is located on cliff where the land is eroding into the Pacific Ocean; clear threat to personal safety.
Reasons: Extensive deterioration

Shuttle Support Training Trail
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430001
Status: Excess
Comments: Public access denied & no alternative without compromising National Security.
Reasons: Secured Area

Dryden Learning Center
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430002
Status: Excess
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

Shuttle Support—Test Equip.
Pool Trailer
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430003
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Guard Post No. 12 (Shuttle)
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430004
Status: Excess
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

ARCATA Administration Facility
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430005
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Shuttle Support (Debris)
Trailer
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430006
Status: Excess
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

Calibration Facility
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430007
Status: Excess
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

Strategic Communications Office
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430009
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Guard Post No. 6
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430010
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Paint Spray Building
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430011
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Astronaut Trailers
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430012
Status: Excess
Directions: T–69; T–70
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Projects Office Trailer
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430013
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Inspector General Office Trail
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430014
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Shuttle Support Administration
Office
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430015
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Paint & Oil Storage (Shuttle)
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430016
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Shuttle Support (Flight Crew
Equipment) Trailer
AFRC on Edwards AFB
Edwards, CA

Landholding Agency: NASA
Property Number: 71201430017
Status: Excess
Comments: Public access denied & no alternative without compromising national necurity.
Reasons: Secured Area

Project Support Complex
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430018
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Battery Maintenance Shop
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430019
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Shuttle Support (KSC Payloads) Trailer
AFRC on Edwards AFB
Edwards, CA
Landholding Agency: NASA
Property Number: 71201430020
Status: Excess
Comments: Public access denied & no alternative without compromising national security.
Reasons: Secured Area

Florida

5 Buildings
P.O. Box 9007, Naval Air Station
Key West, FL 33040
Landholding Agency: Navy
Property Number: 77201430003
Status: Excess
Directions: A–332; A–336; A–726; A–4107; A–4230
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

Mississippi

Building 1105 Laboratory/ Office Facility
Stennis Space Center
Hancock, MS 39529
Landholding Agency: NASA
Property Number: 71201430008
Status: Unutilized
Comments: Public access denied and no alternative without compromising national security.
Reasons: Secured Area

New Jersey

Cutter Support (47579)
USCG ANT
85 Port Terminal Blvd.
Bayonne, NJ 07002
Landholding Agency: Coast Guard
Property Number: 88201430001
Status: Unutilized
Comments: Documented deficiencies: Damaged by Sandy; foundation structurally unsound; major water damage; any attempt will result in the complete collapse of property.
Reasons: Extensive deterioration

New York

Building 215 Wings E &F
Coast Guard Dr.
Staten Island, NY 10305
Landholding Agency: Coast Guard
Property Number: 88201430002
Status: Unutilized
Comments: Public access denied and no alternative method w/out compromising national security.
Reasons: Secured Area

Rhode Island

208
Quonset
N. Kingstown, RI
Landholding Agency: Air Force
Property Number: 18201430032
Status: Underutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

[FR Doc. 2014–19050 Filed 8–14–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5807–N–01]

Proposed Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2015

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2015 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings in the HOME program. FMRs are also used in the calculation of maximum award amounts for Continuum of Care grantees. Today's notice provides proposed FY 2015 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2015. The FY 2015 FMRs are based on ''5-year'' data collected by the American Community Survey (ACS) from 2008 through 2012. These data are updated by one-year 2012 ACS data for areas where statistically valid one-year ACS data is available. The Consumer Price Index (CPI) rent and utility indexes are used to further update the data from 2012 to the end of 2013. Finally, ACS data on changes national median gross rents from 2007 to 2012 are used to inflate the 2013 estimates to the 2015 levels. HUD continues to use ACS data in different ways according to the statistical reliability of rent estimates for areas of different population sizes and counts of rental units. The proposed FY 2015 FMRs in this notice do not reflect any updates to the methodology used to calculate FMRs.

The proposed FY 2015 FMR areas are based on Office of Management and Budget (OMB) metropolitan area definitions as updated through December 1, 2009, and include HUD modifications that were first used in the determination of FY 2006 FMR areas. The February 28, 2013 OMB Area definition update has not been incorporated in this set of proposed FMRs due to the timing of the release and the availability of ACS data. HUD will work toward evaluating the impact of these new area definitions and discuss these findings in the final FY 2015 FMR publication, or, if that is not possible, in a subsequent publication in January 2015.

The January 2015 notice will also discuss and solicit comments on several topics related to the calculation of FMRs, including the implementation of the February 28, 2013 OMB Metropolitan Area Definitions and possible measures the Department is considering that would reduce the concentration of Section 8 voucher tenants. For example, HUD is evaluating alternatives to the current 50th percentile FMR program, which was implemented to mitigate excessive geographic concentration of voucher tenants. Comments will be requested to determine interest in a program that is based on different measures for determining how many and which areas would receive special FMRs to encourage deconcentration, as well as on alternative FMR-based tools for promoting deconcentration such as Small Area FMRs estimated at the ZIP code level.

DATES: *Comment Due Date: September 15, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding the proposed FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban

Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately 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. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2015 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2015 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters [451 7th Street SW., Room 8208, Washington, DC 20410]; telephone number 202–402–2409 (this is not a toll-free number), or they may be reached at *emad-hq@hud.gov.* Persons with hearing or speech impairments may access HUD numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Electronic Data Availability. This **Federal Register** notice will be available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html,* the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's proposed FY 2015 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15.* Proposed FY 2015 FMRs are available in a variety of electronic formats at *http://www.huduser.org/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on proposed FY 2015 Metropolitan Area Rents are available in Microsoft Excel format at the same web address. Please note that these Small Area FMRs are for reference only, except where they are used by public housing agencies (PHAs) participating in the Small Area FMR demonstration or by other PHAs using them for exception rent payment standards.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit the Department to establish 50th percentile FMRs for certain areas.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c)(1) states, in part:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.)

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census

Continued

unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to deconcentrate within the last three years.

In FY 2014 there were 19 areas using 50th-percentile FMRs. Of these 19 areas, 13 areas completed three years of program participation and were evaluated. Only four of the 13 areas will continue as 50th-percentile FMR areas; the nine that do not show measurable deconcentration over the three-year period will not continue as 50th-percentile FMR areas and will not be evaluated for three years. The table below lists the nine areas that are not eligible for 50th percentile FMRs until 2018.

FMR AREAS THAT FAILED TO DECONCENTRATE AND YEAR OF NEXT REEVALUATION

Austin-Round Rock-San Marcos, TX MSA	2018	Fort Worth-Arlington, TX HUD Metro FMR Area	2018
Houston-Baytown-Sugar Land, TX HUD Metro FMR Area.	2018	Las Vegas-Paradise, NV MSA	2018
North Port-Bradenton-Sarasota, FL MSA	2018	Orange County, CA HUD Metro FMR Area	2018
Phoenix-Mesa-Glendale, AZ MSA	2018	Sacramento—Arden-Arcade—Roseville, CA HUD Metro FMR Area.	2018
Tucson, AZ MSA	2018		

An additional six areas that failed to deconcentrate as of 2012 will once again become 50th percentile areas. In summary, there will be 16 50th-percentile FMR areas in FY 2015. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state. The following table lists the FMR areas along with the year of their next evaluation.

FY 2015 50TH-PERCENTILE FMR AREAS AND YEAR OF NEXT REEVALUATION

Albuquerque, NM MSA	2018	Baltimore-Towson, MD HUD Metro FMR Area	2016
Chicago-Joliet-Naperville, IL HUD Metro FMR Area	2018	Denver-Aurora-Broomfield, CO MSA	2018
Fort Lauderdale, FL HUD Metro FMR Area	2016	Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area.	2018
Honolulu, HI MSA	2018	Kansas City, MO–KS HUD Metro FMR Area	2018
Milwaukee-Waukesha-West Allis, WI MSA	2018	New Haven-Meriden, CT HUD Metro FMR Area	2016
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA.	2016	Richmond, VA HUD Metro FMR Area	2016
Riverside-San Bernardino-Ontario, CA MSA	2018	Tacoma, WA HUD Metro FMR Area	2018
Virginia Beach-Norfolk-Newport News, VA–NC MSA	2018	West Palm Beach-Boca Raton, FL HUD Metro FMR Area.	2016

III. FMR Methodology

This section provides a brief overview of how the FY 2015 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15.*

The proposed FY 2015 FMRs are based on OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB's changes to the area definitions through December 2009 are incorporated as are non-metropolitan county geography changes published by the Census Bureau through December 2012. The updated metropolitan area definitions published by OMB on February 28, 2013 have not been incorporated because the Census Bureau did not incorporate these definitions into the 2012 ACS tabulations; therefore, the FY 2015 area definitions are the same as those used in FY 2014. HUD anticipates that the new OMB area definitions will be incorporated into the FY 2016 proposed FMRs.

A. Base Year Rents

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2008 through 2012 in December of 2013. For FY 2015 FMRs, HUD used the 2008–2012 5-year ACS data to update the base rents. HUD has updated base rents each year based on new 5-year data since FY 2012, for which HUD used 2005–2009 ACS data. HUD is also updating base rents for Puerto Rico FMRs using the 2008–2012 Puerto Rico Community Survey (PRCS); HUD first updated the Puerto Rico base rents in FY 2014 based on 2007–2011 PRCS data collected through the ACS program.

HUD historically based FMRs on gross rents for recent movers (those who have moved into their current residence in the last 24 months). However, due to the way Census constructs the 5-year ACS data, HUD developed a new methodology for calculating recent-mover FMRs in FY 2012. As in FY 2012, HUD assigns all areas a base rent which is the estimated two-bedroom standard quality 5-year gross rent from the ACS.[2] Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. Calculation of the recent mover factor is described below.

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. The calculation of the recent mover factor for FY 2015 is similar to the

tracts where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This continues to be evaluated with 2000 Decennial Census information. Although the 5-year ACS tract level data is available, HUD plans to implement new 50th percentile areas in conjunction with the implementation of new OMB area definitions.

[2] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2008–2012 5-year ACS, HUD uses the two-bedroom state non-metro area rent.

methodology HUD used in FY 2014, with the only difference being the use of updated ACS data. The following describes the process for determining the appropriate recent mover factor.

In general, HUD uses the 1-year ACS-based two-bedroom recent mover gross rent estimate from the smallest geographic area encompassing the FMR area for which the estimate is statistically reliable to calculate the recent mover factor.[3] HUD calculates some areas' recent mover factors using data collected just for the FMR area. However, HUD bases other areas' recent mover factors on larger geographic areas if this is necessary to obtain statistically reliable estimates. For metropolitan areas that are sub-areas of larger metropolitan areas, the order is FMR area, metropolitan area, aggregated metropolitan parts of the state, and state. Metropolitan areas that are not divided follow a similar path from FMR area, to aggregated metropolitan parts of the state, to state. In nonmetropolitan areas HUD bases the recent mover factor on the FMR area, the aggregated non-metropolitan parts of the state, or if that is not available, on the basis of the whole state. HUD calculates the recent mover factor as the percentage change between the 5-year 2008–2012 standard quality two-bedroom gross rent and the 1-year 2012 recent mover two-bedroom gross rent for the recent mover factor area. HUD does not allow recent mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2015 Proposed FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15.* Applying the recent mover factor to the standard quality base rent produces an ''as of'' 2012 recent mover two-bedroom base gross rent for the FMR area.[4]

C. Other Rent Survey Data

HUD does not use the ACS as the base rent or recent mover factor for 13 areas where the FY 2015 FMR was adjusted based on survey data collected in late 2012, or 2013 by the PHA (for Hood River, OR, Oakland, CA, Santa Barbara, CA, and Stamford, CT) or by HUD (for Burlington, VT, Cheyenne, WY, Danbury, CT, Flagstaff, AZ, Mountrail County, ND, Odessa, TX, Rochester, MN, Ward County, ND, and Williams County, ND). HUD has no funds to conduct surveys of FMR areas, and so all future surveys must be paid for by the PHAs.

D. Updates From 2012 to 2013

HUD updates the ACS-based ''as of'' 2012 rent through the end of 2013 using the annual change in CPI from 2012 to 2013. As in previous years, HUD uses local CPI data coupled with Consumer Expenditure Survey (CEX) data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Additionally, HUD is using CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2012 to 2013 for all Puerto Rico FMR areas. Following the application of the appropriate CPI update factor, HUD converts the ''as of'' 2013 CPI adjusted rents to ''as of'' December 2013 rents by multiplying each rent by the national December 2013 CPI divided by the national annual 2013 CPI value.

E. Trend From 2013 to 2015

As in FY 2014, HUD continues to calculate the trend factor as the annualized change in median gross rents as measured across the most recent 5 years of available 1-year ACS data. The national median gross rent in 2007 was $789 and $884 in 2012. The overall change between 2007 and 2012 is 12.04 percent and the annualized change is 2.30 percent. Over a 15-month time period, the effective trend factor is 2.883 percent. HUD applies this trend factor to the ''as of'' December 2013 rents to produce FMRs that correspond to the middle of the 2015 fiscal year.

F. Puerto Rico Utility Adjustments

The gross rent data from the 2008 to 2012 Puerto Rico Community Survey (PRCS) does not include the utility rate increases from Commonwealth-owned utility companies from last year that were submitted as part of the comments from Puerto Rico housing agencies. HUD included additional utility values in the final FY 2014 FMRs to account for these changes in Puerto Rico and continues these adjustments in the proposed FY 2015 FMRs for all areas in Puerto Rico.

The table below shows the fixed amount that is added to the Puerto Rico FMRs by bedroom count.

ADDITIONS TO PUERTO RICO PROPOSED FMRS TO ACCOUNT FOR RECENT UTILITY RATE INCREASES

	0-Bedroom	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
Utility Adjustment	$20	$25	$35	$40	$50

G. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit bedroom counts and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other unit bedroom counts than it is to develop independent FMR estimates for each unit bedroom count. When calculating FY 2013 FMRs, HUD updated the bedroom ratio adjustment factors using 2006–2010 5-year ACS data using similar methodology to what was implemented when calculating bedroom ratios using 2000 Census data. The bedroom ratios HUD used in the calculation of FY 2015 FMRs remain the 2006–2010 based ratios applied to the two-bedroom FMR computed from the 2012 ACS data.

HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: Efficiency FMRs are

[3] For the purpose of the recent mover factor calculation, statistically reliable is where the recent mover gross rent has a margin of error that is less than the estimate itself.

[4] The ACS is not conducted in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the US Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted ''long-form'' sample surveys for these areas. The results gathered by this long form survey were expected to be available late in 2012; however, these data have not yet become available. Therefore, HUD uses the national change in gross rents, measured between 2011 and 2012 to update last year's FMRs for these areas.

constrained to fall between 0.59 and 0.81 of the two-bedroom FMR; one-bedroom FMRs must be between 0.74 and 0.84 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.36 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.24 and 1.64 of the two-bedroom FMR. (The maximums for the three-bedroom and four-bedroom FMRs are irrespective of the adjustments discussed in the next paragraph.) HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents). The bedroom ratios for Puerto Rico follow these constraints.

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small or statistically insignificant 2006–2010 5-year ACS standard quality rents, HUD used state non-metropolitan data to determine bedroom ratios for each unit bedroom count. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

IV. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2014 were updated to FY 2015 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

V. Small Area Fair Market Rents

Public housing authorities in the Dallas, TX HMFA, along with the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga, TN Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Laredo, TX Housing Authority continue to be the only PHAs managing their voucher programs using Small Area Fair Market Rents (SAFMRs). These FMRs are listed in the Schedule B addendum.

SAFMRs are calculated using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. This rent ratio is multiplied by the current two-bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. For proposed FY 2015 SAFMRs, HUD continues to use the rent ratios developed in conjunction with the calculation of FY 2013 FMRs based on 2006–2010 5-year ACS data.[5] In the following section, HUD explains its use of the 2006–2010 5-year ACS data and specifically requests public comment on the methodology used to calculate the Small Area FMR rent ratios.

VI. Request for Public Comments

HUD seeks public comments on the methodology used to calculate FY 2015 Proposed FMRs including Small Area FMRS, and the FMR levels for specific areas. Due to its current funding levels, HUD no longer has sufficient resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. Commenters submitting comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used or a description of the methodology intended to be used to collect the necessary data) to justify any proposed changes. Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters [451 7th Street SW., Room 8208, Washington, DC 20410]; telephone number 202–402–2409, or they may be reached at *emad-hq@hud.gov.*

For small metropolitan areas without one-year ACS data and nonmetropolitan counties, HUD has developed a methodology using mail surveys that is discussed on the bottom of the FMR Web page: *http://www.huduser.org/portal/datasets/fmr.html.* This methodology allows for the collection of as few as 100 one-bedroom, two-bedroom and three-bedroom recent mover (tenants that moved in last 24 months) units.

While HUD has not developed a specific methodology for mail surveys in areas with 1-year ACS data, HUD would apply the standard established for Random-Digit Dialing (RDD) telephone rent surveys. The statistical difference of these survey results will be compared with the current FMR which means that the survey confidence interval must be outside the FMR. The survey should collect results based on 200 one-bedroom and two-bedroom eligible recent mover units to provide a small enough confidence interval for significant results in large market mail surveys. Areas with statistically reliable 1-year ACS data are not considered to be good candidates for local surveys due to the size and completeness of the ACS process.

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent of the entire FMR area. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist within the entire FMR area and should be statistically reliable.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped

[5] HUD has provided numerous detailed accounts of the calculation methodology used for Small Area Fair Market Rents. Please see our **Federal Register** notice of April 20, 2011 (76 FR 22125) for more information regarding the calculation methodology. Also, HUD's Proposed FY 2015 FMR documentation system available at (*http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15*) contains detailed calculations for each ZIP code area in participating jurisdictions.

surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2008–2012 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current rental market data than the 2012 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments, should survey funding be restored, when determining the areas HUD will select for HUD-funded local area rent surveys.

For Small Area FMRs, HUD has been criticized for continuing to use 2010 5-year ACS data as the basis for the Small Area FMR rent ratios, instead of updating these each year. HUD kept the rent ratios based on 2006–2010 5-year ACS data in order to provide stability in the Small Area FMRs and proposed only updating these ratios with the 2011–2015 ACS 5-year data, when all the underlying survey data would have been replaced. However, HUD's current experience with 5-year data for small areas reveals that this may create a greater disruption to Small Area FMRs than if HUD adjusted the ratios annually by applying a smoothing technique such as averaging of several years of 5-year ACS data. By implementing a rolling-average Small Area FMR rent ratio calculation, the Department believes more current data could be used without introducing excessive year-to-year variability in Small Area FMR rent ratios due to sampling variance. HUD anticipates implementing this change to the Small Area FMR rent ratio calculation with the publication of FY 2016 Proposed FMRs unless further analysis or public comment indicate a strong reason not to.

VII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: August 11, 2014.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan Core-Based Statistical Areas (CBSAs), which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2015 proposed FMRs incorporates the OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data updated through December 1, 2009, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as ''formerly nonmetropolitan counties.'') Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census base rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census base rent, or when the 2000 Census median family income for the subarea differs by at least 5 percent from the MSA 2000 Census median family income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HUD Metropolitan FMR Areas (HMFAs) to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Unit Bedroom Count Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for all PHAs operating using

Small Area FMRs (please see section V of this notice for a list of participating PHAs). The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	491	513	675	872	908	Calhoun
Auburn-Opelika, AL MSA	597	601	813	1119	1374	Lee
Birmingham-Hoover, AL HMFA	545	652	773	1015	1142	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	423	475	599	802	1061	Chilton
Columbus, GA-AL MSA	536	628	745	1026	1319	Russell
Decatur, AL MSA	457	552	655	908	936	Lawrence, Morgan
Dothan, AL HMFA	461	493	635	847	1047	Geneva, Houston
Florence-Muscle Shoals, AL MSA	474	477	609	813	816	Colbert, Lauderdale
Gadsden, AL MSA	370	478	622	775	874	Etowah
Henry County, AL HMFA	435	465	599	883	987	Henry
Huntsville, AL MSA	515	576	711	978	1033	Limestone, Madison
Mobile, AL MSA	624	652	773	1036	1191	Mobile
Montgomery, AL MSA	628	663	788	1084	1288	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	450	572	757	950	1079	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	491	502	608	840	1021	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	494	643	762	1123	1318	Barbour	492	495	670	834	895
Bullock	481	505	599	791	1061	Butler	453	456	599	870	894
Chambers	511	514	696	867	1034	Cherokee	481	500	599	883	894
Choctaw	520	523	708	882	1056	Clarke	461	464	599	836	891
Clay	445	448	599	803	806	Cleburne	510	514	695	866	929
Coffee	477	480	616	835	863	Conecuh	459	462	599	883	886
Coosa	481	505	599	746	801	Covington	460	463	599	866	961
Crenshaw	440	443	599	845	894	Cullman	490	500	611	770	817
Dale	400	470	600	874	1050	Dallas	382	443	599	766	977
DeKalb	418	543	703	879	1121	Escambia	484	505	599	746	870
Fayette	481	505	599	786	1061	Franklin	440	443	599	746	894
Jackson	481	505	599	746	820	Lamar	481	505	599	746	894
Macon	440	443	599	746	848	Marengo	475	478	599	796	801
Marion	481	491	599	869	872	Marshall	447	450	599	825	828
Monroe	481	505	599	883	1061	Perry	459	462	599	874	894
Pickens	440	443	599	746	801	Pike	489	510	605	888	891
Randolph	486	489	619	771	827	Sumter	487	512	607	756	852
Talladega	443	446	603	823	826	Tallapoosa	472	475	599	816	819
Washington	481	505	599	883	899	Wilcox	440	443	599	746	801
Winston	481	505	599	820	1061						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	809	936	1199	1767	2124	Anchorage
Fairbanks, AK MSA	819	1018	1377	2029	2365	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	658	761	1007	1484	1784	Matanuska-Susitna

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	599	703	834	1039	1204	Aleutians West	876	1088	1472	1833	2126
Bethel	832	953	1289	1605	1723	Bristol Bay	778	800	1083	1457	1462
Denali	967	1135	1346	1983	1990	Dillingham	758	891	1056	1315	1525
Haines	657	741	915	1348	1353	Hoonah-Angoon	548	564	763	950	1178
Juneau	769	933	1262	1652	1963	Kenai Peninsula	664	704	882	1105	1445
Ketchikan Gateway	653	843	1097	1616	1754	Kodiak Island	675	795	994	1465	1761
Lake and Peninsula	531	623	739	993	1309	Nome	807	1003	1357	1690	1813
North Slope	734	925	1097	1366	1759	Northwest Arctic	1019	1064	1261	1571	1685
Petersburg	694	715	967	1204	1713	Prince of Wales-Hyder	664	668	904	1126	1208
Sitka	807	856	1158	1613	1672	Skagway	857	1007	1194	1487	1724
Southeast Fairbanks	623	736	976	1216	1678	Valdez-Cordova	771	815	1019	1435	1550
Wade Hampton	624	733	869	1082	1255	Wrangell	596	648	830	1223	1227
Yakutat	625	679	870	1282	1541	Yukon-Koyukuk	593	609	734	914	1139

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	710	825	1033	1311	1671	Coconino
Lake Havasu City-Kingman, AZ MSA	477	589	752	1019	1180	Mohave
Phoenix-Mesa-Glendale, AZ MSA	582	735	908	1338	1563	Maricopa, Pinal
Prescott, AZ MSA	555	630	796	1173	1240	Yavapai
Tucson, AZ MSA	489	611	822	1207	1436	Pima
Yuma, AZ MSA	605	647	854	1258	1441	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	389	475	643	805	967	Cochise	581	600	751	1085	1330
Gila	597	622	838	1210	1420	Graham	454	641	763	1124	1128
Greenlee	458	475	643	801	859	La Paz	536	556	752	937	1167
Navajo	534	537	727	1025	1036	Santa Cruz	544	615	763	962	1351

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	490	559	719	1059	1249	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	484	487	638	850	958	Crawford, Sebastian
Franklin County, AR HMFA	457	460	623	803	936	Franklin
Grant County, AR HMFA	421	493	584	861	1034	Grant
Hot Springs, AR MSA	473	588	795	1058	1298	Garland
Jonesboro, AR HMFA	381	506	626	879	883	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	536	619	744	1040	1155	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	Crittenden
Pine Bluff, AR MSA	409	482	641	803	982	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	366	446	584	856	1008	Poinsett
Texarkana, TX-Texarkana, AR MSA	479	622	764	952	1021	Miller

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	435	438	592	737	840
Baxter	449	456	608	891	1077
Bradley	411	432	584	848	851
Carroll	455	458	607	791	811
Clark	440	443	584	774	780
Cleburne	472	475	609	800	934
Conway	464	467	632	787	1025
Dallas	455	493	584	861	1021
Drew	429	432	584	840	1034
Greene	393	466	627	870	1111
Hot Spring	472	510	605	806	935
Independence	433	436	590	747	947
Jackson	429	432	584	861	1034
Lafayette	429	432	584	861	884
Lee	472	510	605	775	809
Logan	347	432	584	727	814
Mississippi	378	447	605	804	892
Montgomery	429	432	584	727	884
Newton	429	432	584	727	884
Phillips	429	432	584	861	953
Polk	448	451	584	782	785
Prairie	455	493	584	861	1034
St. Francis	472	493	584	813	935
Searcy	429	432	584	727	780
Sharp	429	432	584	768	876
Union	485	489	661	823	944
White	453	456	617	909	956
Yell	429	432	584	861	1034

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	429	432	584	791	794
Boone	438	441	597	834	1002
Calhoun	458	461	624	777	944
Chicot	431	434	584	861	1034
Clay	429	432	584	758	800
Columbia	429	432	584	822	825
Cross	489	493	636	875	1061
Desha	429	432	584	802	1005
Fulton	429	432	584	727	884
Hempstead	455	477	584	727	949
Howard	390	432	584	767	945
Izard	429	432	584	727	802
Johnson	445	448	601	749	921
Lawrence	429	432	584	777	929
Little River	418	432	584	727	1034
Marion	429	432	584	727	855
Monroe	429	432	584	794	1004
Nevada	429	432	584	754	1014
Ouachita	450	452	584	752	780
Pike	443	446	584	727	884
Pope	456	459	614	838	1087
Randolph	429	432	584	745	884
Scott	429	432	584	727	884
Sevier	455	463	584	750	819
Stone	429	432	584	750	884
Van Buren	455	493	584	741	884
Woodruff	429	432	584	861	884

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	631	636	832	1220	1474	Kern
Chico, CA MSA	527	660	870	1242	1541	Butte
El Centro, CA MSA	476	579	748	1102	1325	Imperial
Fresno, CA MSA	649	676	853	1199	1399	Fresno
Hanford-Corcoran, CA MSA	504	596	807	1147	1206	Kings
Los Angeles-Long Beach, CA HMFA	913	1103	1424	1926	2145	Los Angeles
Madera-Chowchilla, CA MSA	647	651	881	1280	1404	Madera
Merced, CA MSA	498	577	759	1118	1344	Merced
Modesto, CA MSA	583	720	923	1360	1578	Stanislaus
Napa, CA MSA	902	1131	1513	2159	2166	Napa
Oakland-Fremont, CA HMFA	1039	1260	1585	2213	2716	Alameda, Contra Costa
Orange County, CA HMFA	1117	1283	1608	2250	2505	Orange

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	969	1158	1555	2148	2486	Ventura
Redding, CA MSA	702	722	907	1337	1490	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	788	908	1153	1629	1987	Riverside, San Bernardino
Sacramento--Arden-Arcade--Roseville, CA HMFA	676	806	1012	1491	1792	El Dorado, Placer, Sacramento
Salinas, CA MSA	879	987	1244	1814	2029	Monterey
San Benito County, CA HMFA	761	945	1279	1885	2265	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	964	1060	1390	2021	2462	San Diego
San Francisco, CA HMFA	1256	1635	2062	2801	3386	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1213	1419	1809	2551	2892	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	877	1014	1309	1929	2011	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1060	1218	1460	1951	2259	Santa Barbara
Santa Cruz-Watsonville, CA MSA	1073	1298	1756	2263	2525	Santa Cruz
Santa Rosa-Petaluma, CA MSA	898	1047	1370	2019	2367	Sonoma
Stockton, CA MSA	605	721	946	1394	1675	San Joaquin
Vallejo-Fairfield, CA MSA	765	964	1207	1779	2115	Solano
Visalia-Porterville, CA MSA	577	592	771	1136	1321	Tulare
Yolo, CA HMFA	757	818	1105	1628	1899	Yolo
Yuba City, CA MSA	551	664	850	1228	1454	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	595	605	818	1019	1320	Amador	587	729	986	1308	1592
Calaveras	642	699	882	1300	1562	Colusa	569	573	775	1142	1373
Del Norte	613	617	835	1230	1343	Glenn	570	574	777	1121	1376
Humboldt	630	692	933	1375	1600	Inyo	728	758	901	1328	1596
Lake	626	630	853	1257	1270	Lassen	646	683	924	1292	1297
Mariposa	611	621	840	1046	1356	Mendocino	811	869	1147	1580	1910
Modoc	468	542	643	948	1131	Mono	842	962	1141	1421	1842
Nevada	1016	1023	1355	1997	2309	Plumas	512	636	861	1072	1416
Sierra	757	769	1040	1533	1679	Siskiyou	522	622	794	1158	1303
Tehama	467	580	785	1107	1269	Trinity	551	554	741	1092	1312
Tuolumne	580	704	952	1403	1408						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	857	996	1232	1815	2157	Boulder
Colorado Springs, CO HMFA	531	659	856	1261	1516	El Paso
*Denver-Aurora-Broomfield, CO MSA	723	893	1156	1696	1967	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	600	742	893	1316	1582	Larimer
Grand Junction, CO MSA	491	585	779	1148	1319	Mesa
Greeley, CO MSA	523	611	786	1153	1392	Weld
Pueblo, CO MSA	462	560	733	1049	1132	Pueblo
Teller County, CO HMFA	558	719	899	1298	1302	Teller

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	528	550	654	815	874
Baca	519	542	643	948	987
Chaffee	571	575	778	1146	1336
Conejos	519	542	643	801	859
Crowley	472	475	643	805	1139
Delta	575	579	783	975	1350
Eagle	879	885	1198	1550	1970
Garfield	779	784	1061	1326	1879
Gunnison	576	653	883	1100	1478
Huerfano	479	482	652	812	871
Kiowa	514	518	672	837	966
Lake	665	720	974	1213	1495
Las Animas	516	520	703	978	982
Logan	394	489	662	824	978
Moffat	580	584	743	1095	1099
Montrose	496	574	776	1096	1374
Otero	383	475	643	801	859
Phillips	479	482	643	801	859
Prowers	472	475	643	804	875
Rio Grande	519	542	643	854	1139
Saguache	519	542	643	816	1139
San Miguel	812	1049	1284	1866	2220
Summit	750	1018	1261	1656	2106
Yuma	472	475	643	849	1001

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	618	622	807	1055	1078
Bent	472	475	643	801	987
Cheyenne	472	475	643	881	987
Costilla	519	542	643	948	951
Custer	472	475	643	837	987
Dolores	519	542	643	948	987
Fremont	561	578	695	999	1077
Grand	633	637	862	1207	1211
Hinsdale	653	657	853	1169	1309
Jackson	562	565	734	914	1127
Kit Carson	472	475	643	801	1134
La Plata	695	740	921	1248	1604
Lincoln	500	504	643	801	987
Mineral	492	495	643	801	987
Montezuma	519	542	643	948	1139
Morgan	490	493	643	832	913
Ouray	733	738	999	1472	1617
Pitkin	874	1086	1469	1946	1963
Rio Blanco	509	513	694	1023	1074
Routt	661	890	1097	1502	1507
San Juan	663	759	1027	1513	1577
Sedgwick	519	542	643	915	918
Washington	472	475	643	801	868

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	803	1008	1283	1679	1818	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	770	840	1137	1416	1648	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	1027	1170	1583	1973	2497	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	732	918	1144	1425	1655	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	958	1011	1249	1581	1762	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	874	1055	1316	1639	1818	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	716	805	1057	1353	1560	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	891	897	1214	1689	1695	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1291	1564	1943	2420	3010	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	594	803	979	1219	1325	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	790	802	1030	1305	1548	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	567	711	953	1187	1329	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	649	830	984	1378	1738	Kent

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	814	959	1156	1440	1546	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	713	730	987	1347	1568

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington-Arlington-Alexandria, DC-VA-MD HMFA....	1167	1230	1458	1951	2451	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	491	614	728	972	1058	Baker
Cape Coral-Fort Myers, FL MSA	703	707	896	1216	1251	Lee
Crestview-Fort Walton Beach-Destin, FL MSA	719	724	905	1334	1559	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA	569	731	900	1229	1324	Volusia
*Fort Lauderdale, FL HMFA	764	994	1263	1801	2237	Broward
Gainesville, FL MSA	676	695	883	1180	1534	Alachua, Gilchrist
Jacksonville, FL HMFA	628	775	931	1228	1502	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	637	641	830	1126	1370	Polk
Miami-Miami Beach-Kendall, FL HMFA	745	907	1162	1594	1863	Miami-Dade
Naples-Marco Island, FL MSA	691	795	990	1293	1592	Collier
North Port-Bradenton-Sarasota, FL MSA	675	750	960	1286	1511	Manatee, Sarasota
Ocala, FL MSA	504	625	783	1055	1059	Marion
Orlando-Kissimmee-Sanford, FL MSA	707	836	997	1330	1608	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	542	709	878	1216	1446	Brevard
Palm Coast, FL MSA	640	717	935	1217	1336	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA..	703	747	886	1206	1524	Bay
Pensacola-Ferry Pass-Brent, FL MSA	613	698	828	1116	1448	Escambia, Santa Rosa
Port St. Lucie, FL MSA	684	758	939	1291	1522	Martin, St. Lucie
Punta Gorda, FL MSA	508	669	854	1213	1217	Charlotte
Sebastian-Vero Beach, FL MSA	532	659	821	1104	1109	Indian River
Tallahassee, FL HMFA	705	749	905	1160	1578	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	610	765	959	1280	1533	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	580	584	790	1065	1399	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	752	965	1206	1628	1945	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	519	542	643	948	951	Calhoun	519	533	643	801	905
Citrus	600	604	770	1020	1270	Columbia	480	620	747	1101	1323
DeSoto	532	555	658	898	901	Dixie	519	542	643	939	942
Franklin	576	601	713	1051	1054	Glades	623	627	812	1054	1143
Gulf	567	592	702	1034	1038	Hamilton	519	533	643	801	940
Hardee	534	544	661	823	883	Hendry	556	560	757	998	1151

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	571	575	726	1070	1073	Holmes	519	542	643	881	905
Jackson	519	539	643	801	999	Lafayette	519	533	643	801	905
Levy	531	542	657	915	1164	Liberty	519	533	643	948	951
Madison	519	533	643	948	1066	Monroe	1200	1208	1635	2132	2185
Okeechobee	508	511	692	862	925	Putnam	519	522	644	802	861
Sumter	635	663	786	1158	1240	Suwannee	383	475	643	923	927
Taylor	519	542	643	948	1024	Union	472	475	643	834	860
Walton	592	596	807	1069	1078	Washington	472	475	643	852	905

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	478	542	653	904	928	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	553	608	743	1007	1135	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	708	773	916	1213	1474	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	541	610	728	990	1226	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	515	518	701	873	982	Brantley, Glynn, McIntosh
Butts County, GA HMFA	570	574	776	999	1037	Butts
Chattanooga, TN-GA MSA	476	574	714	971	1094	Catoosa, Dade, Walker
Columbus, GA-AL MSA	536	628	745	1026	1319	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	495	536	653	838	1045	Whitfield
Gainesville, GA MSA	647	651	824	1069	1101	Hall
Haralson County, GA HMFA	474	477	646	908	1039	Haralson
Hinesville-Fort Stewart, GA HMFA	569	592	739	1043	1296	Liberty
Lamar County, GA HMFA	476	520	616	908	1005	Lamar
Long County, GA HMFA	454	473	590	807	1045	Long
Macon, GA MSA	488	586	695	960	1049	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	471	514	609	780	814	Meriwether
Monroe County, GA HMFA	446	536	635	936	1125	Monroe
Murray County, GA HMFA	454	457	616	776	1081	Murray
Rome, GA MSA	559	562	761	948	1346	Floyd
Savannah, GA MSA	633	778	922	1230	1459	Bryan, Chatham, Effingham
Valdosta, GA MSA	588	591	735	942	1121	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	655	674	832	1067	1275	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	473	494	586	730	856	Atkinson	349	433	586	730	783
Bacon	453	456	586	730	783	Baldwin	470	541	687	891	918
Banks	473	494	586	805	967	Ben Hill	455	458	609	758	814
Berrien	430	433	586	730	1025	Bleckley	430	433	586	864	887
Bulloch	438	494	629	911	1106	Calhoun	430	433	586	730	887
Camden	571	575	778	1081	1241	Candler	430	433	586	730	884
Charlton	430	433	586	814	887	Chattooga	430	433	586	787	1038

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	482	485	614	765	930	Clinch	430	433	586	845	887
Coffee	437	440	586	853	1030	Colquitt	434	436	586	864	866
Cook	473	494	586	864	866	Crisp	443	446	586	730	969
Decatur	473	494	586	758	783	Dodge	473	494	586	864	1038
Dooly	473	494	586	864	918	Early	441	444	586	864	985
Elbert	473	478	586	864	887	Emanuel	430	433	586	816	922
Evans	473	476	586	738	783	Fannin	471	474	641	806	1135
Franklin	430	433	586	804	1038	Gilmer	507	510	667	831	1181
Glascock	430	433	586	730	783	Gordon	501	505	655	884	1092
Grady	436	439	594	741	879	Greene	449	452	612	853	912
Habersham	483	504	598	881	1059	Hancock	430	433	586	730	783
Hart	430	433	586	826	1038	Irwin	430	433	586	730	783
Jackson	501	505	683	851	973	Jeff Davis	473	494	586	798	801
Jefferson	473	480	586	730	783	Jenkins	453	456	586	826	907
Johnson	430	433	586	730	814	Laurens	473	494	586	811	814
Lincoln	430	433	586	864	1038	Lumpkin	514	517	700	944	947
Macon	473	494	586	730	959	Miller	430	433	586	840	864
Mitchell	474	477	646	805	863	Montgomery	473	494	586	730	887
Morgan	488	509	604	890	1033	Peach	358	444	601	819	822
Pierce	437	440	586	730	1038	Polk	457	460	622	807	909
Pulaski	430	433	586	864	887	Putnam	506	521	626	920	923
Quitman	473	494	586	864	887	Rabun	409	567	687	885	918
Randolph	430	433	586	774	887	Schley	430	433	586	817	1038
Screven	430	433	586	779	783	Seminole	473	494	586	804	807
Stephens	430	433	586	808	1038	Stewart	473	494	586	815	887
Sumter	498	509	616	842	845	Talbot	567	571	772	961	1169
Taliaferro	506	509	655	816	992	Tattnall	473	494	586	811	824
Taylor	349	456	586	845	887	Telfair	430	433	586	730	836
Thomas	474	477	640	893	896	Tift	469	474	609	771	999
Toombs	449	452	586	761	817	Towns	507	510	656	817	942
Treutlen	453	456	586	730	783	Troup	616	632	762	1041	1045
Turner	434	437	586	730	1038	Union	430	433	586	760	783
Upson	473	494	586	864	1038	Ware	387	433	586	730	783
Warren	473	480	586	864	866	Washington	473	494	586	765	1038
Wayne	430	433	586	733	783	Webster	461	464	596	742	903
Wheeler	453	456	586	845	995	White	517	520	704	968	1066
Wilcox	430	433	586	730	1006	Wilkes	441	444	586	864	1038
Wilkinson	430	433	586	730	887						

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	1260	1374	1810	2667	3061	Honolulu

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	749	945	1151	1552	1943	Kalawao	462	514	643	852	974
Kauai	895	903	1222	1663	1969	Maui	870	979	1264	1742	1748

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	438	585	736	1085	1205	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	493	587	743	1058	1303	Kootenai
Gem County, ID HMFA	391	486	657	968	1164	Gem
Idaho Falls, ID MSA	422	498	674	951	1194	Bonneville, Jefferson
Lewiston, ID-WA MSA	425	538	695	899	1231	Nez Perce
Logan, UT-ID MSA	487	490	649	934	1140	Franklin
Pocatello, ID MSA	383	482	643	948	1139	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	472	475	643	948	1124	Bear Lake	472	475	643	948	1124
Benewah	515	542	643	863	1139	Bingham	515	537	643	948	951
Blaine	714	719	947	1321	1392	Bonner	514	621	736	1072	1304
Boundary	472	475	643	801	1124	Butte	488	492	643	933	1124
Camas	508	511	648	895	1132	Caribou	504	507	643	900	1124
Cassia	383	477	643	948	1139	Clark	504	507	643	948	1124
Clearwater	515	542	643	886	1124	Custer	472	475	643	884	1124
Elmore	502	506	684	978	1211	Fremont	496	500	676	842	908
Gooding	498	501	643	904	1139	Idaho	488	491	643	901	1139
Jerome	424	494	643	937	957	Latah	520	523	670	987	1187
Lemhi	515	542	643	948	1124	Lewis	519	526	643	948	951
Lincoln	515	542	643	873	1139	Madison	511	514	660	973	1169
Minidoka	515	542	643	948	1012	Oneida	515	542	643	924	1097
Payette	499	503	680	954	1148	Shoshone	469	523	643	828	914
Teton	628	661	784	1054	1389	Twin Falls	465	511	664	872	1132
Valley	479	579	686	1011	1215	Washington	472	475	643	948	1124

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	545	591	778	1095	1323	McLean
Bond County, IL HMFA	480	543	734	914	981	Bond
Cape Girardeau-Jackson, MO-IL MSA	378	470	636	825	1006	Alexander
Champaign-Urbana, IL MSA	521	654	796	1026	1382	Champaign, Ford, Piatt
*Chicago-Joliet-Naperville, IL HMFA	812	922	1093	1393	1624	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	542	592	741	941	990	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	448	554	710	957	1008	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	571	675	874	1240	1444	DeKalb
Decatur, IL MSA	412	526	686	954	1047	Macon

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	558	693	938	1373	1377	Grundy
Kankakee-Bradley, IL MSA	540	686	906	1275	1538	Kankakee
Kendall County, IL HMFA	697	879	1171	1726	1805	Kendall
Macoupin County, IL HMFA	413	478	631	917	1003	Macoupin
Peoria, IL MSA	425	557	714	923	1108	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	481	551	741	1011	1148	Boone, Winnebago
Springfield, IL MSA	464	574	730	955	1006	Menard, Sangamon
St. Louis, MO-IL HMFA	533	633	816	1063	1206	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	395	491	664	914	1067	Brown	796	989	1338	1666	1965
Bureau	400	504	672	928	932	Carroll	419	466	631	786	843
Cass	463	466	631	786	890	Christian	469	472	639	796	1016
Clark	419	466	631	786	843	Clay	419	532	631	786	927
Coles	465	468	633	933	981	Crawford	419	532	631	916	919
Cumberland	419	532	631	855	858	De Witt	419	466	631	826	1007
Douglas	463	515	697	868	957	Edgar	467	470	631	868	1118
Edwards	419	507	631	786	927	Effingham	463	466	631	930	1085
Fayette	478	515	631	786	955	Franklin	375	466	631	786	1052
Fulton	487	490	631	808	1065	Gallatin	419	532	631	930	933
Greene	419	532	631	786	1118	Hamilton	419	532	631	786	927
Hancock	375	506	631	786	843	Hardin	419	466	631	786	927
Henderson	419	521	631	787	843	Iroquois	467	470	631	872	1006
Jackson	422	508	687	909	1020	Jasper	419	532	631	930	1068
Jefferson	481	501	631	850	1097	Jo Daviess	419	532	631	838	843
Johnson	419	532	631	786	981	Knox	375	466	631	786	1118
La Salle	425	528	715	977	981	Lawrence	510	532	631	930	933
Lee	492	495	635	900	903	Livingston	472	503	669	905	908
Logan	419	466	631	878	881	McDonough	422	525	710	890	1067
Marion	419	480	631	898	901	Mason	419	466	631	786	1031
Massac	446	497	672	837	1190	Montgomery	433	550	652	812	1078
Morgan	394	490	663	826	886	Moultrie	419	532	631	885	922
Ogle	457	508	658	937	1101	Perry	463	466	631	793	1066
Pike	463	532	631	827	1103	Pope	419	532	631	930	933
Pulaski	419	532	631	786	843	Putnam	419	532	631	786	843
Randolph	420	471	633	854	967	Richland	419	466	631	901	904
Saline	463	466	631	908	1043	Schuyler	419	532	631	930	933
Scott	419	480	631	875	1046	Shelby	419	466	631	786	935
Stephenson	419	466	631	786	972	Union	419	466	631	834	843
Wabash	419	466	631	786	900	Warren	432	488	651	953	957
Washington	419	474	631	816	927	Wayne	419	532	631	856	927
White	417	532	631	790	864	Whiteside	461	496	635	791	878
Williamson	473	476	644	909	1141						

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	424	515	697	930	1014	Madison
Bloomington, IN HMFA	604	659	823	1148	1458	Monroe
Carroll County, IN HMFA	519	542	643	919	922	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Dearborn, Franklin, Ohio
Columbus, IN MSA	619	677	843	1108	1144	Bartholomew
Elkhart-Goshen, IN MSA	472	585	763	988	1162	Elkhart
Evansville, IN-KY HMFA	520	558	721	918	1003	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	490	538	687	884	1002	Allen, Wells, Whitley
Gary, IN HMFA	479	646	805	1008	1076	Lake, Newton, Porter
Gibson County, IN HMFA	464	487	643	861	864	Gibson
Greene County, IN HMFA	383	475	643	801	967	Greene
Indianapolis, IN HMFA	516	637	792	1056	1232	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	522	526	711	886	950	Jasper
Kokomo, IN MSA	501	520	704	943	1030	Howard, Tipton
Lafayette, IN HMFA	532	609	768	1005	1263	Benton, Tippecanoe
Louisville, KY-IN HMFA	507	592	737	1020	1154	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	462	537	726	961	970	LaPorte
Muncie, IN MSA	458	510	658	864	1165	Delaware
Owen County, IN HMFA	504	540	694	889	1229	Owen
Putnam County, IN HMFA	519	528	643	948	1088	Putnam
South Bend-Mishawaka, IN HMFA	524	596	763	956	1020	St. Joseph
Sullivan County, IN HMFA	520	543	644	946	949	Sullivan
Terre Haute, IN HMFA	403	501	678	844	991	Clay, Vermillion, Vigo
Washington County, IN HMFA	442	522	643	905	908	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	419	508	643	852	1046	Blackford	419	475	643	801	1137
Cass	419	475	643	801	1137	Clinton	400	497	673	859	966
Crawford	419	475	643	801	913	Daviess	419	475	643	923	926
Decatur	420	522	706	892	943	DeKalb	410	494	643	915	1078
Dubois	419	484	643	948	958	Fayette	456	492	659	844	881
Fountain	428	553	656	928	931	Fulton	421	516	645	803	862
Grant	432	514	694	918	1007	Henry	479	482	647	823	892
Huntington	402	486	647	830	865	Jackson	394	490	663	884	1021
Jay	419	496	643	894	943	Jefferson	383	498	643	878	916
Jennings	397	499	667	861	955	Knox	480	487	643	803	906
Kosciusko	491	563	753	974	1113	LaGrange	383	475	643	801	880
Lawrence	390	507	656	869	938	Marshall	442	503	678	844	906
Martin	419	542	643	948	999	Miami	383	542	643	890	1047
Montgomery	421	507	685	960	977	Noble	403	490	643	801	1103
Orange	419	475	643	876	1091	Parke	419	475	643	874	1139
Perry	419	484	643	913	929	Pike	419	542	643	948	1069
Pulaski	383	478	643	835	859	Randolph	419	496	643	895	1053
Ripley	389	483	654	815	938	Rush	419	475	643	826	859
Scott	434	492	666	914	1013	Spencer	383	475	643	801	859

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	458	553	656	853	877	Steuben	453	514	694	864	968
Switzerland	419	475	643	948	998	Union	427	552	654	964	1158
Wabash	419	475	643	801	859	Warren	419	542	643	875	879
Wayne	519	541	691	912	1027	White	419	542	643	874	877

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	505	591	737	1043	1220	Story
Benton County, IA HMFA	456	507	626	813	998	Benton
Bremer County, IA HMFA	414	446	603	824	827	Bremer
Cedar Rapids, IA HMFA	443	551	745	1009	1123	Linn
Davenport-Moline-Rock Island, IA-IL MSA	448	554	710	957	1008	Scott
Des Moines-West Des Moines, IA MSA	528	634	787	1095	1167	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	459	568	737	988	1147	Dubuque
Iowa City, IA HMFA	526	630	802	1182	1420	Johnson
Jones County, IA HMFA	369	459	621	856	971	Jones
Omaha-Council Bluffs, NE-IA HMFA	480	642	807	1082	1202	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Woodbury
Washington County, IA HMFA	411	491	619	912	1042	Washington
Waterloo-Cedar Falls, IA HMFA	463	537	674	895	1194	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	415	452	612	853	856	Adams	402	438	593	739	819
Allamakee	402	500	593	874	907	Appanoose	435	438	593	752	792
Audubon	402	478	593	739	979	Boone	376	467	632	829	981
Buchanan	443	446	593	768	962	Buena Vista	406	472	600	755	873
Butler	402	500	593	874	905	Calhoun	402	454	593	803	806
Carroll	469	472	593	739	847	Cass	396	485	593	802	854
Cedar	433	472	639	827	902	Cerro Gordo	390	485	656	858	877
Cherokee	402	445	593	739	792	Chickasaw	402	482	593	874	877
Clarke	451	492	666	829	1180	Clay	402	438	593	801	962
Clayton	420	500	593	836	959	Clinton	406	524	656	831	1044
Crawford	402	500	593	765	1050	Davis	419	496	619	771	855
Decatur	442	465	593	874	1050	Delaware	479	486	593	863	884
Des Moines	497	500	677	843	911	Dickinson	413	450	609	856	864
Emmet	402	470	593	750	819	Fayette	369	499	593	762	802
Floyd	402	458	593	835	838	Franklin	435	438	593	828	1014
Fremont	402	481	593	825	904	Greene	402	438	593	739	1050
Hamilton	436	476	644	802	1052	Hancock	402	438	593	739	862
Hardin	402	457	593	741	792	Henry	406	483	600	832	835
Howard	402	438	593	739	792	Humboldt	402	438	593	836	839
Ida	402	450	593	788	792	Iowa	402	467	593	874	1018
Jackson	402	500	593	874	877	Jasper	390	502	656	833	920

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	461	508	681	848	910	Keokuk	402	450	593	825	828
Kossuth	402	438	593	788	830	Lee	408	445	602	826	829
Louisa	436	481	643	801	993	Lucas	402	438	593	779	997
Lyon	402	494	593	739	1015	Mahaska	464	467	602	770	926
Marion	553	563	684	852	1211	Marshall	449	521	641	827	911
Mitchell	402	500	593	874	877	Monona	402	438	593	792	795
Monroe	402	438	593	739	819	Montgomery	435	438	593	863	866
Muscatine	499	545	737	1011	1092	O'Brien	440	482	593	859	862
Osceola	427	514	630	785	842	Page	402	463	593	807	810
Palo Alto	402	498	593	874	1050	Plymouth	432	506	637	882	886
Pocahontas	402	460	593	739	1050	Poweshiek	442	523	653	858	910
Ringgold	402	481	593	744	900	Sac	355	444	593	768	792
Shelby	406	462	599	776	900	Sioux	402	468	593	813	816
Tama	413	450	609	763	890	Taylor	402	500	593	874	877
Union	402	442	593	795	968	Van Buren	402	500	593	833	836
Wapello	434	512	672	858	898	Wayne	402	438	593	874	877
Webster	477	480	593	843	879	Winnebago	402	471	593	874	907
Winneshiek	439	442	598	782	1059	Worth	392	500	593	751	792
Wright	402	467	593	739	792						

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	453	562	760	947	1209	Franklin
*Kansas City, MO-KS HMFA	559	719	891	1221	1360	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	498	629	815	1193	1311	Douglas
Manhattan, KS MSA	586	590	776	1118	1374	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	469	507	677	868	1069	Doniphan
Sumner County, KS HMFA	469	472	639	850	1132	Sumner
Topeka, KS MSA	417	528	701	990	1202	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	439	544	723	997	1099	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	412	535	634	873	876	Anderson	412	476	634	934	1123
Atchison	396	498	665	980	983	Barber	412	469	634	833	922
Barton	512	534	634	837	1091	Bourbon	420	484	655	816	1064
Brown	412	469	634	869	872	Chase	412	473	634	900	903
Chautauqua	429	557	660	925	960	Cherokee	412	469	634	860	1020
Cheyenne	412	469	634	790	847	Clark	412	523	634	825	1123
Clay	548	552	747	930	998	Cloud	412	484	634	934	937
Coffey	412	469	634	857	860	Comanche	412	535	634	825	922
Cowley	417	489	641	856	860	Crawford	439	523	675	995	1181
Decatur	412	471	634	790	922	Dickinson	412	484	634	875	1123

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	412	469	634	790	1061
Ellis	451	469	634	884	956
Finney	453	543	697	881	1181
Gove	412	535	634	805	922
Grant	412	471	634	912	922
Greeley	412	471	634	790	866
Hamilton	461	528	710	884	1032
Haskell	495	562	761	948	1189
Jewell	412	535	634	865	905
Kingman	417	541	642	800	1090
Labette	412	469	634	790	847
Lincoln	428	538	659	821	881
Lyon	377	469	634	857	861
Marion	412	469	634	790	847
Meade	412	469	634	790	847
Montgomery	506	509	634	854	999
Morton	412	490	634	790	847
Neosho	412	469	634	841	847
Norton	412	535	634	907	922
Ottawa	432	550	665	980	1178
Phillips	412	493	634	924	1064
Rawlins	412	469	634	790	922
Republic	412	469	634	790	847
Rooks	412	529	634	790	847
Russell	449	511	691	902	1034
Scott	412	471	634	934	937
Sheridan	412	469	634	790	847
Smith	412	506	634	934	937
Stanton	412	471	634	856	902
Thomas	412	535	634	909	1123
Wallace	412	471	634	790	922
Wichita	432	502	665	828	967
Woodson	412	469	634	934	937

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Elk	412	535	634	934	937
Ellsworth	412	494	634	813	922
Ford	508	544	676	861	1041
Graham	412	535	634	934	937
Gray	412	518	634	849	852
Greenwood	412	499	634	885	1030
Harper	412	481	634	934	1116
Hodgeman	412	469	634	790	922
Kearny	412	471	634	912	922
Kiowa	412	535	634	934	937
Lane	412	471	634	790	922
Logan	412	469	634	790	847
McPherson	433	492	666	829	890
Marshall	491	495	634	845	1044
Mitchell	412	535	634	934	962
Morris	412	511	634	795	922
Nemaha	412	495	634	934	937
Ness	412	535	634	790	989
Osborne	412	535	634	925	929
Pawnee	412	469	634	790	847
Pratt	422	480	650	810	869
Reno	444	499	675	949	1011
Rice	412	483	634	858	969
Rush	412	535	634	855	922
Saline	533	544	694	897	1060
Seward	459	580	707	891	1048
Sherman	412	471	634	845	1123
Stafford	412	482	634	790	847
Stevens	468	532	720	897	1047
Trego	413	470	636	937	940
Washington	465	469	634	790	847
Wilson	412	469	634	860	1123

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	484	499	659	837	1012	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	525	599	781	1035	1122	Christian, Trigg
Elizabethtown, KY MSA	560	564	744	1096	1318	Hardin, Larue
Evansville, IN-KY HMFA	520	558	721	918	1003	Henderson, Webster
Grant County, KY HMFA	425	523	707	881	945	Grant

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Boyd, Greenup
Lexington-Fayette, KY MSA	508	593	776	1105	1237	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	507	592	737	1020	1154	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	449	483	653	926	929	Meade
Nelson County, KY HMFA	442	509	643	948	965	Nelson
Owensboro, KY MSA	479	497	672	869	956	Daviess, Hancock, McLean
Shelby County, KY HMFA	520	523	708	951	1117	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	410	412	558	822	825	Allen	419	471	558	822	825
Anderson	527	530	666	829	965	Ballard	410	412	558	765	913
Barren	416	418	566	793	894	Bath	419	469	558	822	825
Bell	344	447	558	783	786	Boyle	450	453	613	852	1086
Breathitt	419	471	558	695	776	Breckinridge	419	454	558	822	825
Butler	419	471	558	822	988	Caldwell	419	470	558	787	790
Calloway	462	520	625	892	896	Carlisle	422	473	561	699	750
Carroll	459	515	611	900	1031	Carter	419	471	558	780	988
Casey	410	412	558	760	782	Clay	419	471	558	822	988
Clinton	368	442	558	786	988	Crittenden	419	471	558	798	801
Cumberland	419	449	558	822	825	Elliott	419	442	558	695	782
Estill	419	436	558	695	946	Fleming	419	471	558	822	825
Floyd	426	473	567	715	1004	Franklin	414	549	672	990	994
Fulton	419	471	558	822	825	Garrard	437	491	582	813	816
Graves	419	421	558	695	820	Grayson	419	428	558	785	854
Green	419	471	558	766	769	Harlan	451	471	558	759	832
Harrison	332	412	558	695	842	Hart	410	412	558	695	746
Hickman	419	442	558	695	746	Hopkins	441	443	559	824	958
Jackson	534	600	711	909	997	Johnson	410	412	558	723	746
Knott	410	412	558	794	797	Knox	410	412	558	804	807
Laurel	424	476	564	746	999	Lawrence	419	430	558	720	962
Lee	419	471	558	820	823	Leslie	410	412	558	695	746
Letcher	419	456	558	695	746	Lewis	410	412	558	736	746
Lincoln	410	412	558	725	758	Livingston	419	471	558	822	825
Logan	413	420	558	695	746	Lyon	410	412	558	695	782
McCracken	483	486	618	770	826	McCreary	419	471	558	768	782
Madison	473	476	620	878	1098	Magoffin	410	412	558	695	782
Marion	429	432	585	729	782	Marshall	457	493	667	856	891
Martin	419	471	558	804	988	Mason	417	420	568	801	804
Menifee	419	471	558	714	782	Mercer	422	427	561	760	896
Metcalfe	423	426	576	717	807	Monroe	413	416	558	695	746
Montgomery	436	489	580	843	1027	Morgan	439	442	558	822	838
Muhlenberg	365	430	558	695	988	Nicholas	410	413	558	801	988
Ohio	416	419	558	790	988	Owen	428	431	583	756	1033

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	419	442	558	731	782
Pike	515	519	702	904	938
Pulaski	441	444	572	793	894
Rockcastle	419	426	558	795	835
Russell	342	412	558	739	933
Taylor	365	441	597	744	798
Union	445	456	558	770	782
Wayne	419	433	558	695	782
Wolfe	425	429	565	833	1001
Perry	419	471	558	695	746
Powell	410	412	558	798	809
Robertson	457	460	623	776	873
Rowan	410	528	648	807	1016
Simpson	445	448	593	739	831
Todd	419	469	558	808	810
Washington	472	530	628	851	855
Whitley	424	427	578	781	994

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	549	559	680	922	1058	Grant, Rapides
Baton Rouge, LA HMFA	548	669	797	993	1144	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	475	547	740	957	1311	Lafourche, Terrebonne
Iberville Parish, LA HMFA	431	463	627	847	990	Iberville
Lafayette, LA MSA	477	636	754	989	1223	Lafayette, St. Martin
Lake Charles, LA MSA	536	565	712	949	1162	Calcasieu, Cameron
Monroe, LA MSA	508	512	675	841	902	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	648	767	950	1192	1443	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	604	677	842	1049	1148	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	484	487	627	843	846
Assumption	493	529	627	924	958
Beauregard	506	520	627	837	1111
Caldwell	493	529	627	924	1050
Claiborne	493	529	627	924	1111
East Carroll	490	493	627	781	1108
Franklin	460	463	627	815	838
Jackson	481	500	627	924	1019
La Salle	469	472	627	864	945
Madison	460	463	627	802	838
Natchitoches	550	574	681	906	921
Richland	460	463	627	854	884
St. James	493	529	627	924	1001
St. Mary	476	479	639	897	960
Tensas	460	463	627	781	838
Vernon	526	652	882	1098	1179
Webster	493	507	627	822	838
Winn	493	529	627	842	846
Allen	493	525	627	887	890
Avoyelles	425	463	627	901	1089
Bienville	493	529	627	924	945
Catahoula	493	524	627	924	1010
Concordia	460	463	627	924	927
Evangeline	460	463	627	830	852
Iberia	523	527	713	888	953
Jefferson Davis	493	529	627	889	892
Lincoln	599	603	742	1029	1314
Morehouse	466	469	627	781	1025
Red River	512	549	651	959	981
Sabine	506	514	627	781	1111
St. Landry	421	463	627	786	838
Tangipahoa	547	702	832	1051	1231
Vermilion	519	557	660	963	1128
Washington	473	476	644	802	1020
West Carroll	460	463	627	898	935

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	571	660	833	1037	1205	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	559	703	932	1333	1588	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	499	591	772	973	1033	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	448	562	666	932	1077	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	730	869	1074	1421	1492	Cumberland County towns of Cape Elizabeth town, Casco town, Chebeague Island town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	693	736	873	1132	1425	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	627	724	917	1245	1289	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	786	860	1132	1527	1533	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	548	564	679	860	942	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	573	598	709	883	1256	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	588	666	848	1116	1133	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Marshall Island UT, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona Island town, Waltham town, Winter Harbor town
Kennebec County, ME	518	599	766	961	1024	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	743	748	922	1182	1232	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, Muscle Ridge Island UT, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	504	672	847	1055	1132	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Louds Island UT, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport Island town, Whitefield town, Wiscasset town
Oxford County, ME	515	547	689	930	1204	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	491	554	657	852	900	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	599	627	746	1015	1019	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	559	670	794	1081	1150	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	520	572	681	868	1053	Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	833	985	1232	1574	1713	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1055	1316	1567	2008	2202	Columbia city
Cumberland, MD-WV MSA	459	542	643	875	997	Allegany
Hagerstown, MD HMFA	545	662	857	1186	1203	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Cecil
Salisbury, MD HMFA	549	681	922	1186	1308	Wicomico
Somerset County, MD HMFA	415	589	698	878	965	Somerset
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1167	1230	1458	1951	2451	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	617	622	841	1120	1257
Garrett	508	545	654	832	874
St. Mary's	834	1045	1239	1801	2187
Worcester	580	663	881	1097	1337

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	649	680	836	1041	1117
Kent	636	640	866	1139	1534
Talbot	796	801	1043	1299	1792

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	825	920	1234	1614	1695	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town, Yarmouth town
Berkshire County, MA (part) HMFA.....	675	705	836	1059	1291	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1071	1196	1494	1861	2023	Essex County towns of Amesbury Town city, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree Town city, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin Town city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth Town city, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop Town city
Brockton, MA HMFA.....	862	867	1133	1446	1531	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Eastern Worcester County, MA HMFA	700	795	1076	1340	1438	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	922	1016	1286	1833	1839	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	610	828	1025	1277	1518	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	678	732	927	1199	1461	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield Town city, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	798	910	1168	1455	1561	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	750	864	1109	1381	1627	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	673	712	844	1051	1128	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	550	708	839	1045	1178	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	686	773	944	1176	1407	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	616	739	924	1154	1314	Franklin County towns of Sunderland town Hampden County towns of Agawam Town city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer Town city, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield Town city, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton Town city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	760	802	1043	1299	1394	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	531	688	816	1058	1445	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Worcester, MA HMFA	674	823	1036	1290	1411	Phillipston town, Royalston town, Warren town Worcester County towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge Town city, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	770	957	1295	1682	1731	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	935	1161	1571	2205	2213	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	675	813	964	1318	1707	Washtenaw
Barry County, MI HMFA	456	479	648	849	905	Barry
Battle Creek, MI MSA	418	547	689	869	964	Calhoun
Bay City, MI MSA	418	549	702	936	1107	Bay
Cass County, MI HMFA	523	526	689	990	993	Cass
Detroit-Warren-Livonia, MI HMFA	510	648	846	1128	1233	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	424	548	712	929	1049	Genesee
Grand Rapids-Wyoming, MI HMFA	519	588	737	1028	1157	Kent
Holland-Grand Haven, MI MSA	590	616	730	1008	1077	Ottawa
Ionia County, MI HMFA	512	515	680	916	990	Ionia
Jackson, MI MSA	483	560	728	1001	1005	Jackson
Kalamazoo-Portage, MI MSA	472	573	728	958	1166	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	490	624	776	1032	1251	Clinton, Eaton, Ingham
Livingston County, MI HMFA	520	728	863	1250	1501	Livingston
Monroe, MI MSA	475	595	798	1028	1216	Monroe
Muskegon-Norton Shores, MI MSA	419	521	705	961	1100	Muskegon
Newaygo County, MI HMFA	502	505	644	845	1042	Newaygo
Niles-Benton Harbor, MI MSA	492	559	730	982	1143	Berrien
Saginaw-Saginaw Township North, MI MSA	419	556	699	931	1072	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	448	475	643	856	1139	Alger	448	475	643	801	1032
Allegan	576	586	713	927	964	Alpena	411	520	643	948	1122
Antrim	391	497	658	893	1124	Arenac	485	526	643	920	1139
Baraga	448	475	643	801	886	Benzie	549	574	680	1002	1204
Branch	512	515	655	895	898	Charlevoix	533	545	660	822	1043

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cheboygan	448	531	643	948	951
Clare	448	475	643	801	859
Delta	482	486	643	948	1035
Emmet	553	565	764	976	1328
Gogebic	442	475	643	880	1013
Gratiot	448	475	643	823	1030
Houghton	465	475	643	801	917
Iosco	519	542	643	948	1139
Isabella	424	573	679	901	1103
Keweenaw	592	628	849	1251	1255
Leelanau	528	645	765	953	1022
Luce	448	497	643	914	928
Manistee	448	475	643	813	859
Mason	459	486	658	861	879
Menominee	448	489	643	852	994
Missaukee	448	542	643	908	911
Montmorency	450	498	674	939	1194
Ogemaw	452	499	649	808	867
Osceola	448	475	643	912	969
Otsego	462	490	663	933	1004
Roscommon	448	494	643	848	1018
Sanilac	448	475	643	839	938
Shiawassee	397	494	668	840	893
Wexford	415	539	698	956	960

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Chippewa	465	505	667	831	891
Crawford	452	479	648	820	1148
Dickinson	448	480	643	801	1139
Gladwin	448	542	643	948	1139
Grand Traverse	591	621	825	1105	1109
Hillsdale	393	492	643	883	886
Huron	448	532	643	936	1005
Iron	466	475	643	821	859
Kalkaska	478	506	685	946	950
Lake	448	475	643	884	1135
Lenawee	617	624	764	952	1059
Mackinac	448	542	643	813	921
Marquette	476	541	691	861	923
Mecosta	468	542	643	895	902
Midland	615	619	803	1183	1301
Montcalm	480	510	643	910	1032
Oceana	486	490	643	815	1047
Ontonagon	501	504	643	851	921
Oscoda	482	511	692	862	925
Presque Isle	448	494	643	908	1139
St. Joseph	458	523	648	858	925
Schoolcraft	448	475	643	801	1139
Tuscola	384	514	643	889	1055

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	478	574	755	984	1096	Carlton, St. Louis
Fargo, ND-MN MSA	456	553	715	1054	1246	Clay
Grand Forks, ND-MN MSA	441	537	719	973	1173	Polk
La Crosse, WI-MN MSA	433	542	728	1012	1232	Houston
Mankato-North Mankato, MN MSA	562	642	804	1104	1424	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	641	796	996	1403	1656	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	600	651	877	1175	1553	Dodge, Olmsted
St. Cloud, MN MSA	584	603	723	955	1281	Benton, Stearns
Wabasha County, MN HMFA	512	516	643	948	1007	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	504	583	691	1018	1224
Beltrami	478	563	740	1021	1056
Brown	428	542	643	801	859
Chippewa	428	542	643	948	951

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	428	517	643	849	859
Big Stone	428	541	643	801	859
Cass	500	535	703	876	1245
Clearwater	441	489	662	826	1163

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cook	507	538	721	922	1050	Cottonwood	428	475	643	948	951
Crow Wing	444	550	744	1096	1100	Douglas	438	486	657	894	1104
Faribault	428	506	643	948	951	Fillmore	519	540	643	923	991
Freeborn	428	475	643	801	859	Goodhue	489	557	754	1100	1312
Grant	428	542	643	948	951	Hubbard	418	475	643	937	1088
Itasca	444	551	746	929	997	Jackson	428	499	643	917	1082
Kanabec	493	548	741	984	990	Kandiyohi	480	484	651	814	1046
Kittson	428	542	643	901	994	Koochiching	428	475	643	801	936
Lac qui Parle	428	475	643	801	985	Lake	461	542	733	1041	1067
Lake of the Woods	433	481	651	811	948	Le Sueur	433	481	651	813	1067
Lincoln	428	542	643	801	859	Lyon	482	487	643	948	951
McLeod	514	517	679	935	1000	Mahnomen	428	475	643	801	938
Marshall	503	513	643	889	892	Martin	386	479	648	807	1002
Meeker	428	595	720	897	962	Mille Lacs	434	562	730	909	976
Morrison	491	494	643	828	859	Mower	457	523	686	924	1121
Murray	428	542	643	801	1139	Nobles	519	542	643	948	1055
Norman	428	477	643	948	951	Otter Tail	428	512	643	918	944
Pennington	383	475	643	801	1139	Pine	514	599	772	1012	1165
Pipestone	428	542	643	946	1042	Pope	473	526	711	886	950
Red Lake	428	499	643	918	936	Redwood	428	475	643	865	1139
Renville	428	538	643	801	879	Rice	503	625	846	1227	1233
Rock	472	475	643	801	861	Roseau	428	475	643	801	958
Sibley	428	506	643	948	1015	Steele	437	576	734	1012	1300
Stevens	509	513	643	801	859	Swift	428	475	643	947	1139
Todd	468	520	703	1016	1080	Traverse	428	475	643	801	859
Wadena	428	540	643	847	1139	Waseca	428	475	643	948	1139
Watonwan	428	479	643	948	951	Wilkin	428	485	643	865	936
Winona	448	519	675	892	1038	Yellow Medicine	428	484	643	946	1118

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	653	673	808	1039	1107	Hancock, Harrison, Stone
Hattiesburg, MS MSA	546	577	739	990	1041	Forrest, Lamar, Perry
Jackson, MS HMFA	464	646	780	971	1067	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	476	479	648	931	1148	Marshall
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	DeSoto
Pascagoula, MS MSA	589	593	744	1022	1029	George, Jackson
Simpson County, MS HMFA	369	523	620	777	829	Simpson
Tate County, MS HMFA	523	527	713	888	1233	Tate
Tunica County, MS HMFA	531	551	746	929	1136	Tunica

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	450	558	661	867	1118	Alcorn	422	523	620	841	929
Amite	422	523	620	846	1021	Attala	422	523	620	914	917
Benton	422	523	620	797	829	Bolivar	455	458	620	772	829
Calhoun	369	466	620	875	1066	Carroll	422	510	620	887	890
Chickasaw	384	458	620	772	829	Choctaw	422	493	620	914	917
Claiborne	422	523	620	819	829	Clarke	432	535	634	934	937
Clay	458	497	673	838	899	Coahoma	376	533	632	787	845
Covington	422	510	620	914	1079	Franklin	422	458	620	914	917
Greene	422	484	620	914	917	Grenada	422	518	620	782	829
Holmes	422	523	620	772	829	Humphreys	422	458	620	903	906
Issaquena	422	510	620	914	917	Itawamba	422	523	620	914	917
Jasper	422	523	620	914	1002	Jefferson	422	458	620	838	841
Jefferson Davis	422	472	620	914	917	Jones	444	629	746	947	997
Kemper	430	467	632	787	845	Lafayette	571	659	838	1068	1120
Lauderdale	489	606	718	1026	1272	Lawrence	436	541	641	799	1135
Leake	422	523	620	847	868	Lee	384	545	646	879	882
Leflore	504	516	624	777	845	Lincoln	418	458	620	816	1000
Lowndes	416	534	633	886	889	Marion	422	488	620	772	841
Monroe	422	458	620	793	829	Montgomery	422	510	620	870	974
Neshoba	428	519	628	845	971	Newton	445	483	654	915	1158
Noxubee	422	523	620	914	917	Oktibbeha	585	613	732	1049	1257
Panola	423	524	621	850	854	Pearl River	443	480	650	951	955
Pike	447	485	656	817	877	Pontotoc	422	458	620	838	1056
Prentiss	422	487	620	865	886	Quitman	369	523	620	772	829
Scott	369	484	620	774	1009	Sharkey	422	523	620	772	829
Smith	422	458	620	772	935	Sunflower	432	458	620	812	920
Tallahatchie	501	523	620	914	917	Tippah	422	523	620	824	921
Tishomingo	422	466	620	903	942	Union	422	523	620	914	1098
Walthall	454	548	666	829	890	Warren	537	540	688	858	947
Washington	491	495	620	867	871	Wayne	422	458	620	775	1098
Webster	501	523	620	914	1098	Wilkinson	422	458	620	772	829
Winston	422	510	620	896	899	Yalobusha	422	523	620	914	1098
Yazoo	443	481	651	812	870						

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	391	461	624	840	843	Bates
Calloway County, MO HMFA	452	455	616	826	899	Callaway
Cape Girardeau-Jackson, MO-IL MSA	378	470	636	825	1006	Bollinger, Cape Girardeau
Columbia, MO MSA	537	551	710	1039	1256	Boone, Howard
Dallas County, MO HMFA	407	499	604	752	807	Dallas
Jefferson City, MO HMFA	359	446	604	841	869	Cole, Osage

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	462	469	625	854	857	Jasper, Newton
*Kansas City, MO-KS HMFA	559	719	891	1221	1360	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	447	450	604	890	915	McDonald
Moniteau County, MO HMFA	359	446	604	772	881	Moniteau
Polk County, MO HMFA	411	446	604	861	1070	Polk
Springfield, MO HMFA	441	485	654	963	967	Christian, Greene, Webster
St. Joseph, MO-KS MSA	469	507	677	868	1069	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	533	633	816	1063	1206	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	488	509	604	843	893	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	377	505	604	788	1070	Atchison	399	448	604	890	893
Audrain	473	529	716	978	1106	Barry	391	509	604	780	807
Barton	359	462	604	760	807	Benton	411	460	623	918	921
Butler	380	457	604	752	811	Camden	438	560	664	946	1176
Carroll	467	470	604	752	807	Carter	399	509	604	890	933
Cedar	427	478	647	909	1000	Chariton	399	446	604	752	807
Clark	359	467	604	788	933	Cooper	408	473	618	911	987
Crawford	496	501	618	770	921	Dade	399	463	604	820	823
Daviess	399	453	604	890	933	Dent	405	462	614	869	872
Douglas	399	509	604	832	835	Dunklin	443	446	604	890	893
Gasconade	399	467	604	890	1036	Gentry	409	458	620	851	947
Grundy	395	505	604	890	997	Harrison	415	491	628	782	839
Henry	426	483	645	914	1123	Hickory	421	446	604	752	807
Holt	399	446	604	789	931	Howell	359	461	604	772	1070
Iron	399	509	604	805	1070	Johnson	505	524	695	1024	1051
Knox	399	458	604	890	933	Laclede	399	509	604	834	966
Lawrence	458	461	604	858	1070	Lewis	443	446	604	783	933
Linn	443	446	604	811	814	Livingston	443	446	604	798	807
Macon	443	446	604	826	928	Madison	432	483	654	836	874
Maries	399	509	604	890	988	Marion	360	446	604	753	942
Mercer	399	446	604	831	933	Miller	452	511	638	804	853
Mississippi	389	455	615	790	822	Monroe	399	446	604	752	818
Montgomery	411	460	623	785	1103	Morgan	362	449	608	757	860
New Madrid	483	486	604	786	807	Nodaway	484	487	608	762	896
Oregon	399	509	604	807	973	Ozark	399	509	604	752	933
Pemiscot	399	474	604	777	807	Perry	434	486	657	924	1070
Pettis	496	499	675	891	983	Phelps	389	483	654	889	1021
Pike	399	446	604	879	882	Pulaski	465	649	781	1151	1383
Putnam	399	446	604	752	933	Ralls	422	539	639	942	1098
Randolph	378	474	635	791	1125	Reynolds	399	482	604	752	807

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	399	446	604	890	917
Ste. Genevieve	462	465	629	885	972
Saline	399	446	604	820	927
Scotland	399	446	604	769	933
Shannon	359	446	604	752	933
Stoddard	399	452	604	812	815
Sullivan	493	496	671	943	1037
Texas	359	446	604	890	1010
Wayne	399	509	604	831	1070
Wright	399	446	604	762	1062
St. Clair	399	495	604	752	807
St. Francois	484	487	659	889	975
Schuyler	412	446	604	890	1070
Scott	359	446	604	760	831
Shelby	399	446	604	819	822
Stone	414	514	696	867	930
Taney	497	527	654	815	1158
Vernon	410	485	656	867	877
Worth	399	446	604	774	933

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	485	538	728	1007	1010	Carbon, Yellowstone
Great Falls, MT MSA	485	505	648	937	955	Cascade
Missoula, MT MSA	558	604	755	1083	1337	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	472	475	643	948	1019
Blaine	533	540	730	909	976
Carter	469	529	643	903	1019
Custer	454	539	643	937	941
Dawson	469	482	643	923	1139
Fallon	469	529	643	948	1019
Flathead	571	668	827	1219	1465
Garfield	469	496	643	903	1019
Golden Valley	469	542	643	801	1019
Hill	469	484	643	948	951
Judith Basin	469	542	643	917	1019
Lewis and Clark	578	582	785	1060	1258
Lincoln	519	542	643	905	1139
Madison	569	658	780	971	1042
Mineral	469	534	643	889	892
Park	469	582	788	981	1395
Phillips	469	506	643	903	1019
Powder River	646	682	885	1304	1403
Prairie	469	542	643	903	1019
Richland	469	542	643	824	1139
Rosebud	469	475	643	801	859
Sheridan	469	542	643	948	1139
Stillwater	433	475	643	907	1139
Teton	476	508	652	904	1034
Big Horn	469	542	643	912	915
Broadwater	585	592	801	998	1270
Chouteau	469	542	643	948	961
Daniels	469	496	643	878	1019
Deer Lodge	469	542	643	948	1104
Fergus	504	560	690	902	1222
Gallatin	569	615	771	1136	1366
Glacier	519	542	643	948	1022
Granite	545	551	746	929	1183
Jefferson	598	605	819	1020	1095
Lake	402	569	675	870	1130
Liberty	469	496	643	903	1019
McCone	469	496	643	948	1139
Meagher	469	475	643	801	1019
Musselshell	469	475	643	893	1019
Petroleum	527	557	722	1014	1144
Pondera	469	542	643	948	1139
Powell	469	542	643	801	1122
Ravalli	559	563	758	1117	1121
Roosevelt	469	475	643	801	859
Sanders	384	479	643	818	921
Silver Bow	511	514	696	867	1019
Sweet Grass	515	595	706	1040	1250
Toole	469	542	643	948	1139

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	538	568	737	1027	1168	Valley	469	542	643	890	894
Wheatland	538	568	737	1035	1168	Wibaux	469	496	643	903	1019

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	416	530	700	973	1215	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	480	642	807	1082	1202	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	429	533	721	898	964	Saunders
Seward County, NE HMFA	361	473	607	841	1075	Seward
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	447	450	609	758	814	Antelope	409	512	607	788	811
Arthur	409	455	607	894	897	Banner	409	455	607	765	830
Blaine	424	471	629	783	860	Boone	409	512	607	756	811
Box Butte	409	466	607	796	844	Boyd	409	512	607	894	897
Brown	409	449	607	756	895	Buffalo	413	493	667	900	1150
Burt	409	449	607	834	837	Butler	409	449	607	801	1001
Cedar	409	449	607	756	1075	Chase	409	449	607	756	858
Cherry	409	449	607	756	830	Cheyenne	409	474	607	879	882
Clay	409	512	607	756	811	Colfax	417	522	619	771	860
Cuming	409	449	607	756	823	Custer	409	512	607	894	1075
Dawes	432	449	607	894	897	Dawson	409	449	607	756	811
Deuel	409	449	607	756	830	Dodge	394	502	662	870	885
Dundy	409	449	607	756	830	Fillmore	409	449	607	785	818
Franklin	409	455	607	892	1075	Frontier	409	449	607	756	811
Furnas	409	449	607	756	830	Gage	399	459	613	799	833
Garden	409	455	607	756	1005	Garfield	433	481	642	800	858
Gosper	414	454	614	765	839	Grant	409	455	607	756	830
Greeley	409	455	607	894	947	Hall	408	512	662	827	885
Hamilton	409	449	607	772	921	Harlan	409	449	607	756	811
Hayes	434	482	644	802	861	Hitchcock	409	455	607	756	854
Holt	409	512	607	756	841	Hooker	409	455	607	778	830
Howard	409	449	607	769	811	Jefferson	409	460	607	756	991
Johnson	430	472	638	795	853	Kearney	420	525	623	844	847
Keith	409	512	607	823	1005	Keya Paha	409	455	607	756	830
Kimball	435	477	646	805	863	Knox	409	512	607	894	1075
Lincoln	388	483	653	813	931	Logan	409	455	607	756	830
Loup	409	455	607	756	830	McPherson	409	455	607	756	830
Madison	429	477	637	822	1021	Merrick	409	449	607	894	897
Morrill	409	449	607	769	893	Nance	409	512	607	756	822
Nemaha	409	481	607	756	1075	Nuckolls	409	512	607	894	897

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 31

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	409	463	607	894	1075	Pawnee	409	449	607	756	811
Perkins	409	455	607	756	952	Phelps	409	512	607	756	1075
Pierce	409	512	607	756	1071	Platte	490	512	607	756	926
Polk	409	449	607	756	811	Red Willow	409	479	607	756	957
Richardson	409	503	607	756	811	Rock	409	455	607	772	830
Saline	457	501	678	844	906	Scotts Bluff	459	488	650	810	953
Sheridan	409	512	607	820	823	Sherman	409	449	607	756	960
Sioux	409	512	607	817	830	Stanton	409	449	607	894	978
Thayer	409	449	607	756	811	Thomas	409	455	607	756	830
Thurston	409	449	607	756	811	Valley	409	449	607	756	830
Wayne	409	449	607	844	847	Webster	409	512	607	894	1075
Wheeler	409	455	607	894	897	York	409	458	607	756	811

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	545	684	870	1240	1510	Carson
Las Vegas-Paradise, NV MSA	630	787	969	1428	1695	Clark
Reno-Sparks, NV MSA	551	699	924	1362	1637	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	504	656	846	1054	1498	Douglas	566	762	942	1388	1668
Elko	505	628	849	1085	1382	Esmeralda	383	475	643	903	1032
Eureka	484	600	812	1011	1303	Humboldt	439	544	736	1052	1181
Lander	420	594	704	918	1130	Lincoln	383	475	643	836	875
Lyon	473	663	786	1158	1392	Mineral	383	542	643	801	1032
Nye	458	568	769	1032	1043	Pershing	383	542	643	948	1032
White Pine	452	639	758	1095	1099						

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1071	1196	1494	1861	2023	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	724	767	924	1154	1322	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	798	910	1168	1455	1561	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	639	846	1074	1338	1515	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	782	888	1159	1558	1809	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	718	837	1064	1458	1521	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	937	950	1285	1764	1770	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	729	734	993	1413	1418	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	707	786	1019	1418	1424	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	662	794	1048	1305	1707	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	573	598	709	946	1134	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	943	965	1213	1523	1693	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	639	801	1001	1320	1575	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	718	819	998	1352	1375	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	817	947	1176	1626	1890	Atlantic
Bergen-Passaic, NJ HMFA	1070	1156	1371	1776	2014	Bergen, Passaic
Jersey City, NJ HMFA	1009	1109	1315	1673	1847	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	952	1214	1495	1940	2545	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	936	1106	1373	1903	2239	Monmouth, Ocean
Newark, NJ HMFA	1025	1063	1269	1637	1871	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	668	833	1122	1588	1671	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	932	1053	1269	1659	1919	Mercer
Vineland-Millville-Bridgeton, NJ MSA	784	905	1115	1432	1795	Cumberland
Warren County, NJ HMFA	687	921	1124	1469	1638	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	543	682	836	1210	1481	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	499	536	725	903	969	San Juan
Las Cruces, NM MSA	445	534	634	907	1008	Dona Ana

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	739	804	953	1278	1366	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	473	532	631	930	947	Chaves	425	466	631	891	1101
Cibola	479	482	631	871	1118	Colfax	474	477	645	803	862
Curry	466	469	631	922	1118	De Baca	473	532	631	930	947
Eddy	534	548	728	935	973	Grant	473	532	631	930	1015
Guadalupe	473	491	631	930	947	Harding	473	491	631	836	947
Hidalgo	473	491	631	930	947	Lea	525	528	715	909	962
Lincoln	488	606	820	1021	1096	Los Alamos	603	776	1006	1315	1704
Luna	473	531	631	910	913	McKinley	577	632	749	933	1001
Mora	473	532	631	831	947	Otero	389	532	631	921	1118
Quay	463	466	631	811	843	Rio Arriba	375	466	631	786	843
Roosevelt	400	521	672	837	1190	San Miguel	380	524	638	843	873
Sierra	429	466	631	786	947	Socorro	444	466	631	786	1118
Taos	563	677	810	1009	1082	Union	463	466	631	914	947

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	690	782	968	1206	1294	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	549	581	742	1058	1199	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	581	617	768	982	1111	Erie, Niagara
Elmira, NY MSA	481	578	758	971	1088	Chemung
Glens Falls, NY MSA	555	710	863	1159	1324	Warren, Washington
Ithaca, NY MSA	780	957	1146	1588	1593	Tompkins
Kingston, NY MSA	689	856	1110	1455	1686	Ulster
Nassau-Suffolk, NY HMFA	1100	1395	1718	2234	2572	Nassau, Suffolk
New York, NY HMFA	1196	1249	1481	1904	2134	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	837	966	1188	1488	1588	Dutchess, Orange
Rochester, NY MSA	585	712	867	1093	1168	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	555	619	792	1039	1140	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	551	561	714	946	1062	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1062	1292	1591	2035	2363	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	528	531	663	867	975	Cattaraugus	517	567	715	949	1016
Cayuga	554	589	749	982	1172	Chautauqua	516	519	677	961	986
Chenango	520	523	656	930	960	Clinton	589	662	845	1134	1223
Columbia	738	743	923	1196	1535	Cortland	594	603	751	970	1004
Delaware	566	569	718	900	1032	Essex	553	650	834	1039	1287
Franklin	561	565	727	1045	1156	Fulton	558	562	722	954	1093
Genesee	458	593	744	954	1053	Greene	669	757	897	1200	1326
Hamilton	514	569	675	841	971	Jefferson	702	808	1050	1335	1507

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	539	583	708	1043	1094	Montgomery	601	605	763	950	1077
Otsego	624	676	839	1127	1198	St. Lawrence	539	612	777	1043	1129
Schuyler	516	564	678	978	1158	Seneca	486	601	712	1016	1020
Steuben	481	568	696	900	1014	Sullivan	686	690	856	1113	1516
Wyoming	456	513	694	905	927	Yates	555	561	730	996	1293

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	484	533	632	925	1119	Anson
Asheville, NC HMFA	510	723	857	1100	1426	Buncombe, Henderson, Madison
Burlington, NC MSA	548	551	695	903	929	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	636	701	831	1120	1389	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	597	737	874	1127	1320	Chatham, Durham, Orange
Fayetteville, NC HMFA	601	605	774	1035	1303	Cumberland
Goldsboro, NC MSA	452	471	637	830	1015	Wayne
Greene County, NC HMFA	464	467	632	793	845	Greene
Greensboro-High Point, NC HMFA	518	594	704	957	1080	Guilford, Randolph
Greenville, NC HMFA	530	533	689	934	1220	Pitt
Haywood County, NC HMFA	625	629	811	1125	1436	Haywood
Hickory-Lenoir-Morganton, NC MSA	511	533	632	827	1028	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	491	494	632	879	1090	Hoke
Jacksonville, NC MSA	624	629	773	1087	1369	Onslow
Pender County, NC HMFA	493	497	672	990	1120	Pender
Person County, NC HMFA	453	490	663	826	950	Person
Raleigh-Cary, NC MSA	663	774	918	1189	1477	Franklin, Johnston, Wake
Rockingham County, NC HMFA	497	500	632	787	845	Rockingham
Rocky Mount, NC MSA	530	533	659	899	948	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	894	920	1107	1530	1926	Currituck
Wilmington, NC HMFA	639	685	847	1117	1274	Brunswick, New Hanover
Winston-Salem, NC MSA	540	561	687	991	1046	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	511	533	632	905	908	Ashe	441	482	632	787	845
Avery	520	524	709	1045	1048	Beaufort	489	492	632	931	1050
Bertie	464	467	632	837	845	Bladen	464	467	632	787	845
Camden	643	647	808	1006	1216	Carteret	662	691	819	1171	1451
Caswell	464	467	632	904	979	Cherokee	464	467	632	835	1073
Chowan	511	533	632	838	1119	Clay	511	533	632	931	1119
Cleveland	498	501	632	877	917	Columbus	511	516	632	787	845
Craven	453	562	761	987	1328	Dare	622	653	883	1239	1480
Davidson	474	502	632	880	996	Duplin	499	502	632	787	923
Gates	503	506	632	840	1111	Graham	464	467	632	931	1119
Granville	550	572	681	848	925	Halifax	470	534	645	841	1138
Harnett	512	515	697	927	1137	Hertford	511	533	632	787	1119

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	620	623	779	970	1041	Iredell	583	609	722	937	1276
Jackson	508	511	654	848	1065	Jones	511	533	632	828	845
Lee	568	593	703	876	939	Lenoir	383	493	644	802	881
Lincoln	511	533	632	861	864	McDowell	464	467	632	789	1034
Macon	532	535	724	902	968	Martin	511	533	632	787	845
Mitchell	464	467	632	813	951	Montgomery	496	499	632	829	949
Moore	638	657	790	1158	1393	Northampton	470	473	632	843	1084
Pamlico	464	467	632	902	1106	Pasquotank	618	622	782	1051	1233
Perquimans	545	569	675	995	1196	Polk	547	551	728	907	1210
Richmond	511	533	632	837	845	Robeson	482	485	632	802	973
Rowan	521	524	678	903	1041	Rutherford	511	533	632	896	1052
Sampson	376	509	632	853	981	Scotland	487	490	663	848	886
Stanly	376	480	632	873	1103	Surry	511	533	632	931	1119
Swain	474	477	646	805	974	Transylvania	495	498	652	868	872
Tyrrell	511	533	632	809	951	Vance	391	486	657	818	958
Warren	392	480	632	931	1119	Washington	655	659	824	1181	1391
Watauga	502	656	844	1183	1377	Wilkes	474	533	632	787	1055
Wilson	457	528	715	951	956	Yancey	474	477	632	795	845

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	535	607	759	1076	1269	Burleigh, Morton
Fargo, ND-MN MSA	456	553	715	1054	1246	Cass
Grand Forks, ND-MN MSA	441	537	719	973	1173	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	477	480	600	884	887	Barnes	499	502	636	792	850
Benson	485	506	600	884	887	Billings	487	490	612	762	830
Bottineau	440	443	600	747	802	Bowman	521	544	645	950	954
Burke	462	465	600	776	802	Cavalier	440	443	600	836	995
Dickey	485	506	600	801	814	Divide	477	480	600	836	839
Dunn	462	465	600	884	887	Eddy	485	506	600	884	887
Emmons	485	506	600	884	1001	Foster	466	469	600	883	1063
Golden Valley	485	506	600	836	839	Grant	440	443	600	836	839
Griggs	485	506	600	884	1063	Hettinger	485	506	600	884	887
Kidder	447	450	600	867	870	LaMoure	440	443	600	884	887
Logan	477	480	600	836	839	McHenry	468	471	600	787	934
McIntosh	440	443	600	747	803	McKenzie	479	483	653	962	966
McLean	480	483	600	818	861	Mercer	485	506	600	884	887
Mountrail	883	922	1093	1361	1907	Nelson	485	506	600	836	839
Oliver	477	480	600	836	839	Pembina	485	506	600	747	802

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	485	506	600	884	887	Ramsey	468	471	600	823	826
Ransom	482	485	651	959	963	Renville	440	443	600	884	887
Richland	441	444	600	879	949	Rolette	485	506	600	884	966
Sargent	440	443	600	865	945	Sheridan	485	494	600	836	839
Sioux	477	480	600	827	830	Slope	487	490	612	853	856
Stark	599	625	741	1028	1032	Steele	482	485	600	795	814
Stutsman	462	465	612	762	1004	Towner	440	443	600	836	981
Traill	440	443	600	765	803	Walsh	485	506	600	811	908
Ward	812	866	1142	1683	1752	Wells	485	506	600	884	951
Williams	811	884	1078	1343	1441						

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	494	574	776	999	1037	Portage, Summit
Brown County, OH HMFA	378	489	635	900	962	Brown
Canton-Massillon, OH MSA	414	519	675	887	952	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	502	603	764	1023	1057	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	501	624	811	1046	1209	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	493	554	726	972	1089	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Lawrence
Lima, OH MSA	471	474	635	791	861	Allen
Mansfield, OH MSA	474	477	634	931	934	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	456	491	642	862	948	Washington
Preble County, OH HMFA	389	483	654	871	875	Preble
Sandusky, OH MSA	426	580	716	933	957	Erie
Springfield, OH MSA	463	522	680	896	982	Clark
Steubenville-Weirton, OH-WV MSA	462	533	656	879	1007	Jefferson
Toledo, OH MSA	404	518	679	916	968	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	482	584	780	971	1042	Union
Wheeling, WV-OH MSA	481	509	634	814	847	Belmont
Youngstown-Warren-Boardman, OH HMFA	469	531	657	866	915	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	431	501	634	803	847	Ashland	394	521	663	938	981
Ashtabula	426	496	646	874	879	Athens	571	596	707	890	945
Auglaize	393	480	649	891	1066	Champaign	413	519	634	934	1008
Clinton	448	489	662	865	1032	Columbiana	411	500	645	854	935
Coshocton	431	496	634	874	895	Crawford	390	469	634	894	898
Darke	464	522	634	916	1029	Defiance	488	491	634	835	1079
Fayette	519	523	707	881	1044	Gallia	431	510	634	836	944
Guernsey	377	496	634	792	884	Hancock	403	515	660	964	996
Hardin	415	495	634	876	1056	Harrison	377	527	634	902	905
Henry	442	537	651	945	1153	Highland	387	482	634	790	847

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	431	496	634	842	847	Holmes	431	491	634	798	847
Huron	377	479	634	890	1004	Jackson	512	530	634	837	847
Knox	502	506	634	884	950	Logan	495	498	674	894	1032
Marion	486	552	708	938	1039	Meigs	431	478	634	824	962
Mercer	454	494	669	926	929	Monroe	431	535	634	790	847
Morgan	470	516	634	934	937	Muskingum	377	517	634	909	999
Noble	493	497	634	873	930	Paulding	431	502	634	810	847
Perry	431	469	634	831	887	Pike	512	535	634	934	1102
Putnam	439	490	647	806	865	Ross	476	520	703	887	1139
Sandusky	431	521	634	837	1123	Scioto	433	535	634	790	932
Seneca	488	492	634	883	891	Shelby	422	500	677	843	905
Tuscarawas	383	488	643	802	859	Van Wert	466	476	634	828	874
Vinton	431	535	634	899	998	Wayne	424	530	674	870	901
Williams	472	475	634	790	926	Wyandot	451	535	634	915	1093

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	484	487	638	850	958	Sequoyah
Grady County, OK HMFA	419	460	623	838	842	Grady
Lawton, OK MSA	519	531	718	994	1174	Comanche
Le Flore County, OK HMFA	491	494	623	818	1015	Le Flore
Lincoln County, OK HMFA	427	502	623	848	851	Lincoln
Oklahoma City, OK HMFA	503	584	748	1024	1229	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	372	528	626	780	837	Okmulgee
Pawnee County, OK HMFA	393	525	623	781	1030	Pawnee
Tulsa, OK HMFA	494	601	783	1062	1183	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	439	460	623	783	833	Alfalfa	439	460	623	780	963
Atoka	439	460	623	776	833	Beaver	460	500	653	836	984
Beckham	529	533	721	898	1087	Blaine	439	460	623	918	921
Bryan	497	500	638	883	959	Caddo	461	489	623	776	1103
Carter	390	463	626	780	872	Cherokee	371	517	623	776	1032
Choctaw	439	468	623	918	1071	Cimarron	439	525	623	787	939
Coal	439	460	623	914	939	Cotton	439	460	623	776	833
Craig	439	525	623	827	892	Custer	503	515	623	918	921
Delaware	474	477	623	878	1103	Dewey	439	477	623	776	871
Ellis	439	525	623	776	939	Garfield	423	531	630	840	941
Garvin	393	460	623	776	868	Grant	439	525	623	776	833
Greer	456	533	648	807	977	Harmon	439	477	623	798	937
Harper	439	477	623	800	939	Haskell	439	460	623	860	863
Hughes	439	525	623	801	833	Jackson	446	475	623	905	1103
Jefferson	439	460	623	776	833	Johnston	439	460	623	776	833

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	467	470	636	823	1015	Kingfisher	439	460	623	802	1073
Kiowa	458	461	623	886	939	Latimer	439	496	623	900	903
Love	439	525	623	867	870	McCurtain	439	460	623	848	1044
McIntosh	421	460	623	776	1103	Major	439	477	623	918	1103
Marshall	445	467	632	869	918	Mayes	371	460	623	857	1103
Murray	442	464	628	782	839	Muskogee	472	575	755	1056	1102
Noble	439	525	623	842	909	Nowata	455	518	646	805	974
Okfuskee	439	522	623	867	870	Ottawa	465	468	633	788	909
Payne	434	535	697	1015	1234	Pittsburg	403	515	677	843	905
Pontotoc	439	525	623	836	1067	Pottawatomie	474	477	646	817	865
Pushmataha	439	460	623	820	918	Roger Mills	439	477	623	828	833
Seminole	412	494	623	916	950	Stephens	439	460	623	872	1103
Texas	441	528	626	780	1109	Tillman	439	468	623	809	833
Washington	388	539	652	952	1136	Washita	439	525	623	918	1103
Woods	439	460	623	776	837	Woodward	511	534	633	933	1121

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	558	646	804	1149	1375	Deschutes
Corvallis, OR MSA	490	628	823	1213	1458	Benton
Eugene-Springfield, OR MSA	493	617	829	1193	1401	Lane
Medford, OR MSA	617	624	844	1244	1402	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	682	793	944	1391	1672	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	538	569	768	1132	1360	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	515	532	677	867	951	Clatsop	562	610	824	1174	1459
Coos	489	557	727	1029	1268	Crook	443	572	706	1040	1209
Curry	519	595	805	1184	1235	Douglas	498	588	775	1142	1373
Gilliam	422	498	655	945	1102	Grant	415	500	643	948	1139
Harney	415	475	643	801	859	Hood River	683	713	845	1245	1377
Jefferson	401	511	643	948	951	Josephine	462	589	776	1122	1226
Klamath	430	565	697	1005	1216	Lake	415	542	643	801	1139
Lincoln	615	657	821	1210	1214	Linn	511	592	801	1166	1279
Malheur	443	494	643	906	967	Morrow	415	475	643	821	996
Sherman	474	620	735	966	1237	Tillamook	490	618	773	1070	1364
Umatilla	441	555	741	974	1312	Union	402	499	675	923	1165
Wallowa	450	559	698	869	984	Wasco	557	614	776	1136	1261
Wheeler	415	475	643	801	1082						

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	670	769	972	1216	1379	Carbon, Lehigh, Northampton
Altoona, PA MSA	515	549	657	865	965	Blair
Armstrong County, PA HMFA	383	475	643	812	885	Armstrong
Erie, PA MSA	438	534	673	841	1004	Erie
Harrisburg-Carlisle, PA MSA	608	678	866	1117	1157	Cumberland, Dauphin, Perry
Johnstown, PA MSA	463	542	643	853	859	Cambria
Lancaster, PA MSA	580	661	845	1089	1129	Lancaster
Lebanon, PA MSA	483	631	812	1044	1152	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	892	898	1141	1435	1817	Pike
Pittsburgh, PA HMFA	549	630	786	987	1050	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	529	656	868	1081	1160	Berks
Scranton--Wilkes-Barre, PA MSA	496	590	735	933	1048	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	487	525	676	853	903	Mercer
State College, PA MSA	660	723	889	1165	1208	Centre
Williamsport, PA MSA	603	681	862	1141	1168	Lycoming
York-Hanover, PA MSA	492	624	827	1069	1141	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	609	613	792	1052	1150	Bedford	519	535	643	832	859
Bradford	480	486	643	862	866	Cameron	467	542	643	930	1139
Clarion	467	542	643	803	1021	Clearfield	454	500	643	861	864
Clinton	518	522	706	917	1146	Columbia	519	522	663	853	1150
Crawford	467	520	643	851	932	Elk	467	519	643	801	859
Forest	536	560	664	978	1176	Franklin	580	674	867	1153	1447
Fulton	467	542	643	804	859	Greene	467	526	643	801	859
Huntingdon	515	536	643	917	920	Indiana	540	563	668	899	902
Jefferson	385	528	643	801	884	Juniata	417	532	643	913	916
Lawrence	390	526	656	853	877	McKean	464	515	643	814	859
Mifflin	498	501	643	808	859	Monroe	614	728	952	1322	1451
Montour	544	631	748	990	1000	Northumberland	527	537	652	854	972
Potter	467	542	643	835	1001	Schuylkill	383	494	643	882	888
Snyder	529	552	655	845	875	Somerset	450	529	643	801	906
Sullivan	515	518	643	888	891	Susquehanna	538	562	666	872	1018
Tioga	384	542	643	801	978	Union	506	522	696	954	1094
Venango	477	480	643	801	859	Warren	519	534	643	808	943
Wayne	432	591	701	1033	1036						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	948	954	1185	1746	2099	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	686	773	944	1176	1407	Bristol County towns of Barrington town, Bristol town, Warren town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	582	724	979	1231	1541	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	521	529	645	883	913	Anderson
Augusta-Richmond County, GA-SC MSA.....	541	610	728	990	1226	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA...	759	791	940	1217	1615	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA.....	636	701	831	1120	1389	York
Columbia, SC HMFA.....	605	656	778	1026	1301	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	484	506	608	757	917	Darlington
Florence, SC HMFA.....	497	502	624	777	834	Florence
Greenville-Mauldin-Easley, SC MSA.....	485	611	725	962	1139	Greenville, Pickens
Kershaw County, SC HMFA.....	487	527	626	837	1063	Kershaw
Laurens County, SC HMFA.....	575	760	966	1244	1387	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA....	640	644	801	998	1171	Horry
Spartanburg, SC MSA.....	426	568	674	900	1012	Spartanburg
Sumter, SC MSA.....	505	508	652	812	1007	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	452	455	608	825	1077	Allendale.....	489	492	613	763	1086
Bamberg.....	446	449	608	757	1077	Barnwell.....	446	449	608	857	860
Beaufort.....	653	793	940	1192	1440	Cherokee.....	491	513	608	822	1077
Chester.....	491	513	608	793	932	Chesterfield.....	491	513	608	802	1001
Clarendon.....	446	449	608	757	1021	Colleton.....	529	532	671	859	897
Dillon.....	446	449	608	868	871	Georgetown.....	522	526	711	943	1188
Greenwood.....	515	519	674	889	930	Hampton.....	446	449	608	765	813
Jasper.....	436	503	680	909	993	Lancaster.....	479	482	608	837	896
Lee.....	491	513	608	896	1077	McCormick.....	476	479	610	899	902
Marion.....	491	513	608	765	895	Marlboro.....	446	449	608	757	820
Newberry.....	454	458	619	797	1077	Oconee.....	478	481	608	757	950
Orangeburg.....	380	497	627	781	1060	Union.....	446	449	608	803	813

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	362	513	608	781	848

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	432	551	682	961	965	Meade
Rapid City, SD HMFA	503	594	794	1072	1406	Pennington
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Union
Sioux Falls, SD MSA	481	565	711	1000	1177	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	511	517	700	956	960	Beadle	468	473	640	859	863
Bennett	468	540	640	943	1047	Bon Homme	468	516	640	898	979
Brookings	450	523	708	1043	1254	Brown	438	497	672	855	1190
Brule	468	540	640	883	886	Buffalo	563	570	771	960	1030
Butte	468	523	640	943	946	Campbell	468	500	640	883	886
Charles Mix	468	540	640	830	855	Clark	468	473	640	797	855
Clay	522	556	715	1054	1266	Codington	439	532	691	891	923
Corson	468	474	640	911	914	Custer	541	547	740	922	1226
Davison	466	500	677	891	905	Day	468	473	640	943	946
Deuel	468	540	640	925	929	Dewey	468	473	640	890	902
Douglas	609	616	834	1039	1115	Edmunds	481	487	659	971	974
Fall River	548	554	750	1029	1032	Faulk	468	540	640	883	886
Grant	468	503	640	886	1099	Gregory	468	540	640	943	946
Haakon	508	515	695	1024	1028	Hamlin	509	512	642	946	949
Hand	468	486	640	933	936	Hanson	480	486	657	818	878
Harding	468	474	640	883	886	Hughes	489	494	669	986	1185
Hutchinson	468	534	640	855	1134	Hyde	468	474	640	943	946
Jackson	468	540	640	943	946	Jerauld	468	502	640	943	946
Jones	468	474	640	943	946	Kingsbury	468	493	640	943	1028
Lake	468	540	640	943	946	Lawrence	456	531	669	953	957
Lyman	468	517	640	943	1134	McPherson	468	473	640	883	886
Marshall	476	481	651	959	963	Mellette	468	474	640	943	946
Miner	468	540	640	883	886	Moody	468	473	640	941	944
Perkins	468	473	640	797	855	Potter	468	540	640	797	855
Roberts	468	536	640	893	897	Sanborn	468	540	640	943	1031
Shannon	468	521	640	851	880	Spink	517	540	640	943	946
Stanley	522	529	715	1054	1103	Sully	468	474	640	797	855
Todd	468	474	640	797	855	Tripp	468	473	640	867	870
Walworth	468	540	640	943	946	Yankton	457	473	640	893	1067
Ziebach	468	498	640	935	1062						

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	476	574	714	971	1094	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	525	599	781	1035	1122	Montgomery
Cleveland, TN MSA	470	505	683	879	1132	Bradley, Polk
Hickman County, TN HMFA	465	475	642	946	1112	Hickman
Jackson, TN MSA	403	531	678	904	987	Chester, Madison
Johnson City, TN MSA	489	580	729	997	1250	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	461	511	658	861	974	Hawkins, Sullivan
Knoxville, TN MSA	492	628	774	1034	1162	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	421	429	581	724	776	Macon
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	Fayette, Shelby, Tipton
Morristown, TN MSA	408	451	593	795	929	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	616	710	850	1130	1213	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	412	432	581	788	810	Smith
Stewart County, TN HMFA	391	447	581	798	835	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	423	525	622	877	1038	Benton	395	429	581	856	1029
Bledsoe	395	444	581	724	821	Campbell	395	466	581	762	1029
Carroll	395	429	581	724	888	Claiborne	359	485	581	724	1029
Clay	395	429	581	856	861	Cocke	395	477	581	840	843
Coffee	397	479	635	871	928	Crockett	415	515	611	772	940
Cumberland	407	501	599	750	801	Decatur	395	490	581	757	969
DeKalb	395	429	581	848	851	Dyer	440	443	599	808	811
Fentress	395	429	581	740	811	Franklin	398	432	585	782	785
Gibson	465	468	581	795	798	Giles	396	492	583	836	839
Greene	395	485	581	772	783	Grundy	395	447	581	856	859
Hancock	395	437	581	797	1029	Hardeman	395	490	581	731	953
Hardin	395	429	581	727	1029	Haywood	364	515	611	761	817
Henderson	425	462	625	778	835	Henry	404	502	595	741	1054
Houston	346	429	581	733	776	Humphreys	395	490	581	761	776
Jackson	395	429	581	856	859	Johnson	395	429	581	724	776
Lake	454	457	581	856	935	Lauderdale	395	429	581	824	1019
Lawrence	395	448	581	724	802	Lewis	395	490	581	856	1029
Lincoln	395	444	581	724	977	McMinn	362	507	609	802	917
McNairy	369	429	581	724	782	Marshall	449	489	661	842	894
Maury	561	565	750	1007	1151	Meigs	395	444	581	856	859
Monroe	401	448	590	790	834	Moore	395	444	581	779	821
Morgan	395	458	581	724	891	Obion	379	429	581	725	776
Overton	411	449	604	890	1070	Perry	395	490	581	724	821
Pickett	395	444	581	724	821	Putnam	404	456	595	851	934
Rhea	469	474	581	777	800	Roane	426	463	627	855	859
Scott	411	490	581	817	1029	Sevier	470	517	691	861	1109
Van Buren	395	444	581	724	821	Warren	395	429	581	838	1029

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	395	429	581	847	1029
White	406	442	598	777	799
Weakley	434	459	581	811	815

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	567	651	877	1111	1416	Callahan, Jones, Taylor
Amarillo, TX MSA	480	567	745	1017	1064	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	457	545	737	1086	1148	Aransas
Atascosa County, TX HMFA	417	535	701	938	1067	Atascosa
Austin County, TX HMFA	497	563	739	1089	1247	Austin
Austin-Round Rock-San Marcos, TX MSA	681	834	1050	1421	1723	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	487	610	757	992	1012	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	646	650	835	1151	1420	Brazoria
Brownsville-Harlingen, TX MSA	446	526	656	859	955	Cameron
Calhoun County, TX HMFA	525	528	714	892	1121	Calhoun
College Station-Bryan, TX MSA	647	651	803	1161	1392	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	583	699	896	1187	1396	Nueces, San Patricio
Dallas, TX HMFA	607	728	921	1229	1484	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	588	643	794	1125	1350	El Paso
Fort Worth-Arlington, TX HMFA	590	690	893	1198	1426	Johnson, Parker, Tarrant
Houston-Baytown-Sugar Land, TX HMFA	599	721	890	1215	1502	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	591	789	936	1379	1658	Kendall
Killeen-Temple-Fort Hood, TX HMFA	564	579	771	1136	1289	Bell, Coryell
Lampasas County, TX HMFA	474	547	648	955	1067	Lampasas
Laredo, TX MSA	573	618	777	1021	1057	Webb
Longview, TX HMFA	560	565	693	863	1109	Gregg, Upshur
Lubbock, TX MSA	494	575	756	1103	1271	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	448	508	661	823	1005	Hidalgo
Medina County, TX HMFA	444	495	670	885	958	Medina
Midland, TX MSA	690	890	1160	1445	1603	Midland
Odessa, TX MSA	686	795	1023	1302	1367	Ector
Rusk County, TX HMFA	473	477	643	850	1028	Rusk
San Angelo, TX MSA	527	615	821	1139	1221	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	551	695	872	1137	1247	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	510	639	827	1113	1417	Grayson
Texarkana, TX-Texarkana, AR MSA	479	622	764	952	1021	Bowie
Tyler, TX MSA	595	698	828	1099	1107	Smith
Victoria, TX HMFA	550	587	742	924	1184	Goliad, Victoria
Waco, TX MSA	482	566	766	1003	1122	McLennan
Wichita Falls, TX MSA	424	570	712	1009	1155	Archer, Clay, Wichita
Wise County, TX HMFA	499	619	838	1044	1120	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	457	544	645	843	1142
Angelina	523	572	692	905	1019
Baylor	455	475	643	801	933
Andrews	542	593	766	1129	1133
Bailey	455	500	643	801	933
Bee	535	548	662	975	1073

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	526	549	743	925	993
Bosque	455	495	643	944	1063
Briscoe	455	500	643	857	933
Brown	388	482	652	836	1155
Camp	455	542	643	831	948
Castro	455	542	643	801	927
Childress	455	542	643	801	933
Coke	383	475	643	801	933
Collingsworth	470	516	664	978	982
Comanche	455	475	643	801	933
Cooke	555	579	784	1024	1048
Crane	455	500	643	801	933
Culberson	455	500	643	920	933
Dawson	455	536	643	948	951
DeWitt	472	475	643	801	933
Dimmit	455	542	643	801	859
Duval	498	593	703	876	1020
Edwards	455	500	643	801	933
Falls	432	475	643	887	891
Fayette	455	475	643	812	859
Floyd	455	542	643	948	1108
Franklin	455	475	643	948	1139
Frio	455	542	643	948	1139
Garza	455	542	643	948	951
Glasscock	461	506	651	811	944
Gray	455	501	643	806	1021
Hale	469	505	643	875	1067
Hamilton	480	501	678	999	1002
Hardeman	506	556	715	890	1037
Hartley	464	484	655	909	950
Hemphill	455	530	643	801	933
Hill	490	511	692	939	999
Hood	625	630	852	1141	1207
Houston	383	475	643	919	922
Hudspeth	455	500	643	948	951
Jack	558	665	788	981	1396
Jasper	507	557	716	892	957
Jim Hogg	455	542	643	816	933
Karnes	519	542	643	948	1139
Kent	455	500	643	801	933
Kimble	455	475	643	801	859
Kinney	455	492	643	948	951

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	461	506	651	811	944
Brewster	548	551	746	929	1082
Brooks	455	542	643	948	951
Burnet	490	511	692	1020	1226
Cass	455	504	643	885	1139
Cherokee	455	535	643	836	898
Cochran	455	475	643	948	951
Coleman	455	475	643	948	1139
Colorado	421	475	643	923	1138
Concho	717	749	1013	1262	1469
Cottle	455	523	643	948	951
Crockett	455	475	643	948	951
Dallam	455	542	643	939	942
Deaf Smith	455	475	643	896	899
Dickens	455	500	643	801	933
Donley	455	475	643	801	933
Eastland	472	475	643	801	1131
Erath	543	547	718	964	968
Fannin	386	480	649	892	1051
Fisher	455	475	643	948	951
Foard	455	500	643	948	951
Freestone	410	509	689	858	999
Gaines	455	475	643	904	962
Gillespie	602	628	850	1059	1505
Gonzales	472	475	643	948	954
Grimes	457	516	646	861	937
Hall	429	500	643	948	951
Hansford	455	542	643	850	956
Harrison	461	587	732	960	978
Haskell	455	500	643	948	951
Henderson	542	548	671	879	1085
Hockley	491	514	694	864	927
Hopkins	501	504	682	875	1101
Howard	397	494	668	866	992
Hutchinson	488	543	690	875	922
Jackson	430	567	722	979	1279
Jeff Davis	455	542	643	857	933
Jim Wells	508	550	717	893	958
Kenedy	455	500	643	857	933
Kerr	626	630	797	1126	1130
King	461	506	651	811	944
Kleberg	519	523	707	971	1252

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	455	500	643	801	859
Lamb	455	542	643	859	1035
Lavaca	408	475	643	923	933
Leon	455	488	643	836	1004
Lipscomb	455	475	643	801	859
Llano	481	502	679	1001	1004
Lynn	455	542	643	948	951
McMullen	461	506	651	959	963
Marion	455	475	643	801	933
Mason	455	500	643	948	951
Maverick	426	542	643	914	933
Milam	455	507	643	948	1139
Mitchell	455	542	643	924	1139
Moore	533	536	661	823	1096
Motley	455	500	643	801	933
Navarro	546	550	721	904	968
Nolan	455	542	643	948	1139
Oldham	479	570	676	996	1197
Panola	455	475	643	821	1139
Pecos	462	531	643	850	1139
Presidio	455	542	643	948	951
Reagan	455	522	643	802	933
Red River	455	475	643	842	1139
Refugio	455	475	643	920	933
Runnels	455	542	643	948	1139
San Augustine	472	475	643	801	1111
Schleicher	455	475	643	801	933
Shackelford	455	500	643	948	951
Sherman	455	542	643	888	933
Starr	455	475	643	801	1025
Sterling	476	567	672	964	975
Sutton	455	524	643	823	933
Terrell	466	555	658	877	955
Throckmorton	455	500	643	948	951
Trinity	455	536	643	948	1139
Upton	455	542	643	872	933
Val Verde	474	483	654	948	951
Walker	508	621	736	1000	1003
Washington	526	621	742	944	992
Wheeler	468	558	661	950	959
Willacy	455	475	643	853	1139
Wood	482	485	656	882	1119

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	455	542	643	937	1114
La Salle	457	477	646	952	955
Lee	455	542	643	948	951
Limestone	535	568	755	1063	1072
Live Oak	455	542	643	801	859
Loving	461	506	651	868	944
McCulloch	455	475	643	935	938
Madison	455	542	643	948	951
Martin	455	542	643	801	933
Matagorda	416	517	699	947	1238
Menard	455	479	643	872	933
Mills	455	501	643	948	1139
Montague	455	475	643	905	909
Morris	455	483	643	922	933
Nacogdoches	560	580	728	907	973
Newton	455	533	643	801	859
Ochiltree	475	566	671	945	973
Palo Pinto	467	531	719	963	1010
Parmer	455	542	643	843	1088
Polk	468	480	645	945	1087
Rains	455	475	643	948	951
Real	455	475	643	948	951
Reeves	455	511	643	948	1139
Roberts	461	506	651	811	944
Sabine	455	542	643	948	951
San Saba	455	475	643	875	1139
Scurry	521	525	710	1046	1050
Shelby	455	475	643	801	933
Somervell	455	542	643	948	1139
Stephens	505	528	714	932	1036
Stonewall	455	511	643	940	943
Swisher	455	475	643	864	933
Terry	455	491	643	823	933
Titus	383	503	643	805	925
Tyler	455	498	643	948	951
Uvalde	492	542	643	883	933
Van Zandt	499	521	705	912	942
Ward	455	542	643	801	859
Wharton	400	497	673	889	899
Wilbarger	459	480	649	882	941
Winkler	455	475	643	948	951
Yoakum	463	508	654	885	949

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	396	492	666	854	890
Zavala	455	542	643	948	951
Zapata	455	475	643	801	933

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	487	490	649	934	1140	Cache
Ogden-Clearfield, UT MSA	485	594	778	1097	1317	Davis, Morgan, Weber
Provo-Orem, UT MSA	500	639	763	1103	1351	Juab, Utah
Salt Lake City, UT HMFA	606	727	901	1285	1513	Salt Lake
St. George, UT MSA	505	581	763	1047	1344	Washington
Summit County, UT HMFA	682	749	1014	1406	1411	Summit
Tooele County, UT HMFA	538	568	757	977	1241	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	460	511	606	838	841
Carbon	461	464	608	757	861
Duchesne	558	620	735	1083	1302
Garfield	448	451	606	755	877
Iron	410	511	606	854	1073
Millard	460	511	606	893	1050
Rich	460	511	606	755	946
Sanpete	481	484	637	793	851
Uintah	631	635	859	1160	1344
Wayne	460	511	606	861	971
Box Elder	460	511	606	893	1073
Daggett	604	671	795	990	1241
Emery	460	511	606	755	910
Grand	575	638	757	1115	1119
Kane	525	584	692	1020	1023
Piute	603	670	794	989	1240
San Juan	460	511	606	818	821
Sevier	460	511	606	783	937
Wasatch	659	732	868	1279	1283

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	936	1017	1328	1663	1953	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburgh town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	717	780	925	1283	1550	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburgh town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	557	719	902	1140	1270	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	642	679	805	1003	1226	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	547	603	715	890	1144	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	641	775	966	1404	1700	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	532	747	894	1113	1583	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	616	637	762	954	1033	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	647	713	904	1126	1373	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	788	793	983	1247	1560	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	648	729	937	1185	1493	Athens town, Brattleboro town, Brookline town, Dover town,

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	730	735	954	1208	1326	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	527	618	733	1026	1298	Montgomery, Radford city
Charlottesville, VA MSA	662	875	1038	1321	1498	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	412	524	643	911	914	Pittsylvania, Danville city
Franklin County, VA HMFA	445	508	643	821	975	Franklin
Giles County, VA HMFA	491	542	643	937	1064	Giles
Harrisonburg, VA MSA	658	662	863	1096	1528	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	461	511	658	861	974	Scott, Washington, Bristol city
Louisa County, VA HMFA	572	601	713	1051	1054	Louisa
Lynchburg, VA MSA	559	611	746	955	1100	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	519	542	643	820	1015	Pulaski
*Richmond, VA HMFA	797	838	993	1306	1582	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	507	587	732	959	1087	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	894	920	1107	1530	1926	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	679	684	910	1292	1296	Warren
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1167	1230	1458	1951	2451	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	580	633	819	1114	1390	Frederick, Winchester city

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	602	628	745	928	1184
Augusta	513	634	801	1057	1402
Bland	519	542	643	801	1033
Buchanan	519	542	643	801	859
Carroll	519	542	643	870	1091
Culpeper	579	759	974	1435	1725
Essex	633	732	868	1081	1394
Grayson	519	542	643	849	1139
Halifax	498	501	643	820	859
Highland	519	542	643	948	951
Lancaster	645	649	878	1093	1410
Lunenburg	509	512	693	863	926
Mecklenburg	536	560	664	877	957
Northampton	570	574	777	968	1308
Nottoway	612	638	757	1041	1045
Page	527	540	652	812	871
Prince Edward	582	586	775	998	1036
Richmond	570	574	777	1145	1246
Russell	519	542	643	884	1033
Smyth	519	542	643	801	984
Tazewell	519	542	643	813	915
Wise	519	542	643	801	1017
Buena Vista city	498	571	677	843	1182
Covington city	544	548	674	993	1082
Franklin city	606	610	806	1004	1077
Lexington city	498	571	677	843	1182
Norton city	519	542	643	801	1017
Waynesboro city	513	634	801	1057	1402

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	544	548	674	993	1082
Bath	524	547	649	836	1042
Brunswick	508	511	692	862	1226
Buckingham	519	542	643	948	1139
Charlotte	499	502	643	870	874
Dickenson	472	475	643	801	859
Floyd	472	475	643	801	1033
Greensville	557	582	690	1017	1020
Henry	449	540	643	826	952
King George	761	766	1036	1367	1617
Lee	519	529	643	801	1033
Madison	787	822	974	1435	1440
Middlesex	551	575	682	1005	1208
Northumberland	616	620	803	1183	1187
Orange	619	623	843	1102	1493
Patrick	519	542	643	823	1033
Rappahannock	853	891	1056	1550	1696
Rockbridge	498	571	677	843	1182
Shenandoah	493	678	816	1111	1408
Southampton	606	610	806	1004	1077
Westmoreland	590	594	752	959	1208
Wythe	487	491	645	829	1142
Clifton Forge city	544	548	674	993	1082
Emporia city	557	582	690	1017	1020
Galax city	519	542	643	870	1091
Martinsville city	449	540	643	826	952
Staunton city	513	634	801	1057	1402

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	613	721	948	1372	1533	Whatcom
Bremerton-Silverdale, WA MSA	607	778	1020	1465	1746	Kitsap
Kennewick-Pasco-Richland, WA MSA	566	648	829	1108	1428	Benton, Franklin
Lewiston, ID-WA MSA	425	538	695	899	1231	Asotin
Longview, WA MSA	460	599	737	1086	1305	Cowlitz
Mount Vernon-Anacortes, WA MSA	661	735	988	1387	1392	Skagit
Olympia, WA MSA	769	838	1026	1486	1817	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	682	793	944	1391	1672	Clark, Skamania
Seattle-Bellevue, WA HMFA	811	959	1180	1739	2090	King, Snohomish
Spokane, WA MSA	467	571	773	1105	1254	Spokane
*Tacoma, WA HMFA	689	839	1093	1611	1936	Pierce
Wenatchee-East Wenatchee, WA MSA	453	563	762	959	1350	Chelan, Douglas

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	490	597	769	1027	1240	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	419	542	643	898	1052	Clallam	507	619	838	1203	1208
Columbia	427	484	655	940	1072	Ferry	466	542	643	947	1052
Garfield	419	542	643	801	1045	Grant	481	513	679	918	1111
Grays Harbor	454	527	681	972	1005	Island	574	696	909	1339	1401
Jefferson	540	670	907	1130	1606	Kittitas	548	605	818	1205	1449
Klickitat	443	574	680	851	1050	Lewis	459	543	724	951	1099
Lincoln	419	475	643	801	859	Mason	522	647	876	1186	1190
Okanogan	480	535	667	848	1181	Pacific	456	619	767	1027	1200
Pend Oreille	408	506	685	901	1121	San Juan	759	764	974	1286	1302
Stevens	490	493	667	932	1181	Wahkiakum	419	475	643	801	1052
Walla Walla	477	540	731	966	1295	Whitman	465	562	736	1085	1297

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	463	466	628	782	936	Boone
Charleston, WV HMFA	533	599	714	940	1064	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	459	542	643	875	997	Mineral
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Cabell, Wayne
Jefferson County, WV HMFA	596	631	854	1126	1169	Jefferson
Martinsburg, WV HMFA	517	592	786	1015	1050	Berkeley, Morgan
Morgantown, WV MSA	607	634	752	1014	1025	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	456	491	642	862	948	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	462	533	656	879	1007	Brooke, Hancock
Wheeling, WV-OH MSA	481	509	634	814	847	Marshall, Ohio
Winchester, VA-WV MSA	580	633	819	1114	1390	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	452	490	663	826	906	Braxton	399	464	628	782	865
Calhoun	491	522	628	782	886	Doddridge	461	464	628	782	903
Fayette	436	486	628	841	871	Gilmer	520	524	664	827	938
Grant	496	499	675	841	1196	Greenbrier	496	597	708	882	1170
Hardy	516	519	699	871	986	Harrison	489	492	628	813	853
Jackson	461	464	628	804	1014	Lewis	482	485	656	817	877
Logan	507	530	628	889	892	McDowell	507	530	628	797	886
Marion	596	603	738	1082	1086	Mason	475	478	628	912	915
Mercer	490	493	631	786	843	Mingo	374	527	628	782	1030
Monroe	491	530	628	782	886	Nicholas	491	530	628	836	959
Pendleton	491	530	628	925	929	Pocahontas	497	500	677	843	955
Raleigh	554	558	735	915	982	Randolph	515	518	647	920	1126

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	491	530	628	888	891	Roane	404	530	628	925	929
Summers	491	505	628	825	839	Taylor	450	529	631	920	923
Tucker	491	530	628	925	1045	Tyler	491	517	628	782	839
Upshur	484	487	630	845	888	Webster	500	535	639	796	854
Wetzel	491	498	628	925	1112	Wyoming	491	496	628	782	1112

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	412	538	692	1020	1080	Calumet, Outagamie
Columbia County, WI HMFA	499	551	746	1053	1121	Columbia
Duluth, MN-WI MSA	478	574	755	984	1096	Douglas
Eau Claire, WI MSA	502	584	748	1101	1141	Chippewa, Eau Claire
Fond du Lac, WI MSA	452	564	753	961	1157	Fond du Lac
Green Bay, WI HMFA	468	569	754	1077	1106	Brown, Kewaunee
Iowa County, WI HMFA	520	557	754	976	1008	Iowa
Janesville, WI MSA	449	572	755	952	1009	Rock
Kenosha County, WI HMFA	587	701	899	1306	1368	Kenosha
La Crosse, WI-MN MSA	433	542	728	1012	1232	La Crosse
Madison, WI HMFA	640	766	928	1280	1426	Dane
*Milwaukee-Waukesha-West Allis, WI MSA	579	713	896	1143	1236	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	641	796	996	1403	1656	Pierce, St. Croix
Oconto County, WI HMFA	468	519	643	919	922	Oconto
Oshkosh-Neenah, WI MSA	474	513	665	886	1178	Winnebago
Racine, WI MSA	561	565	763	1001	1020	Racine
Sheboygan, WI MSA	468	556	690	906	932	Sheboygan
Wausau, WI MSA	501	521	679	959	1039	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	408	542	643	871	1005	Ashland	408	501	643	829	859
Barron	408	530	685	856	1099	Bayfield	383	542	643	896	900
Buffalo	496	499	675	890	968	Burnett	408	521	643	948	951
Clark	388	475	643	801	859	Crawford	472	475	643	805	922
Dodge	444	569	747	953	998	Door	404	557	679	890	907
Dunn	422	484	655	826	875	Florence	408	487	643	801	889
Forest	408	475	643	839	859	Grant	441	489	643	818	996
Green	436	508	687	856	933	Green Lake	408	499	643	879	1139
Iron	383	475	643	876	1139	Jackson	384	477	645	803	862
Jefferson	493	632	829	1118	1247	Juneau	443	489	645	907	1142
Lafayette	408	493	643	875	940	Langlade	472	543	695	1024	1231
Lincoln	408	475	643	948	1055	Manitowoc	429	482	643	801	964
Marinette	493	497	643	922	1060	Marquette	399	496	671	836	897
Menominee	408	475	643	801	859	Monroe	428	538	719	966	1090
Oneida	551	575	708	946	1254	Pepin	408	542	643	948	951

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	429	533	721	957	964	Portage	405	503	676	842	922
Price	408	475	643	801	981	Richland	461	523	643	831	1065
Rusk	473	476	644	854	1141	Sauk	525	582	763	956	1020
Sawyer	408	542	643	801	859	Shawano	472	475	643	886	1020
Taylor	383	475	643	801	859	Trempealeau	416	475	643	859	1048
Vernon	408	475	643	819	859	Vilas	502	506	684	852	1090
Walworth	576	632	838	1193	1222	Washburn	444	520	700	921	968
Waupaca	477	481	643	853	881	Waushara	475	478	647	825	865
Wood	429	496	643	861	953						

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	500	572	757	1115	1325	Natrona
Cheyenne, WY MSA	519	590	798	1094	1282	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	566	590	761	1089	1155	Big Horn	472	475	643	901	922
Campbell	699	729	914	1151	1221	Carbon	498	502	679	908	1005
Converse	485	489	661	974	977	Crook	545	601	713	1051	1263
Fremont	516	526	712	967	971	Goshen	475	478	643	885	888
Hot Springs	492	542	643	948	1139	Johnson	513	549	671	989	1060
Lincoln	568	614	743	1095	1099	Niobrara	492	542	643	900	1014
Park	460	509	643	918	1139	Platte	492	542	643	898	981
Sheridan	628	662	821	1023	1454	Sublette	615	679	805	1177	1181
Sweetwater	560	669	905	1127	1603	Teton	774	921	1112	1639	1696
Uinta	492	496	660	923	1101	Washakie	492	542	643	911	1096
Weston	511	519	668	832	1019						

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	812	871	1064	1550	1853						

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	420	443	530	683	725	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	370	390	468	647	660	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	314	350	420	519	570	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	415	423	550	799	901	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

SCHEDULE B - FY 2015 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	432	455	545	792	850	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	331	412	558	691	773	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	375	396	475	630	798	Hormigueros, Mayagüez
Ponce, PR MSA	400	422	506	734	884	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	335	354	425	599	718	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	464	502	601	810	975	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	330	349	419	560	730	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	319	327	405	527	615	Coamo	319	327	405	527	615
Culebra	319	327	405	527	615	Jayuya	319	327	405	527	615
Las Marías	319	327	405	527	615	Maricao	319	327	405	527	615
Salinas	319	327	405	527	615	Santa Isabel	319	327	405	527	615
Utuado	319	327	405	527	615	Vieques	319	327	405	527	615

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	602	627	760	949	1086	St. John	684	817	1052	1303	1362
St. Thomas	684	817	1052	1303	1362						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: PHAs participating in the Small Area Demonstration Program and the PHAs serving Dallas, TX using small area FMRs will use the FMRs found on Schedule B Addendum.

08/07/2014

SCHEDULE B Addendum - FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the City of Long Beach

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
90802	750	910	1190	1630	1830	90803	960	1170	1530	2100	2350
90804	830	1010	1320	1810	2030	90805	780	960	1250	1710	1920
90806	760	930	1210	1660	1860	90807	880	1070	1400	1920	2150
90808	1030	1270	1650	2260	2530	90810	750	920	1200	1640	1840
90813	700	860	1120	1540	1720	90815	1120	1370	1790	2450	2750
90822	880	1070	1400	1920	2150						

The Housing Authority of the County of Cook

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60004	910	1030	1220	1560	1810	60005	820	940	1110	1420	1650
60006	760	870	1030	1310	1530	60007	800	910	1080	1380	1610
60008	860	980	1160	1480	1720	60010	1120	1270	1510	1920	2240
60011	760	870	1030	1310	1530	60016	790	900	1070	1360	1590
60018	680	770	910	1160	1350	60022	1020	1160	1380	1760	2050
60025	870	990	1170	1490	1740	60026	1010	1150	1360	1730	2020
60029	760	870	1030	1310	1530	60043	760	870	1030	1310	1530
60053	890	1010	1200	1530	1780	60056	760	860	1020	1300	1520
60062	970	1100	1300	1660	1930	60065	760	870	1030	1310	1530
60067	910	1030	1220	1560	1810	60068	940	1060	1260	1610	1870
60070	790	900	1070	1360	1590	60074	810	920	1090	1390	1620
60076	920	1050	1240	1580	1840	60077	850	970	1150	1470	1710
60089	1020	1160	1380	1760	2050	60090	820	940	1110	1420	1650
60091	1140	1300	1540	1960	2290	60093	1110	1260	1490	1900	2210
60103	970	1100	1300	1660	1930	60104	760	860	1020	1300	1520
60107	1140	1300	1540	1960	2290	60120	760	870	1030	1310	1530
60130	740	840	1000	1270	1490	60131	650	730	870	1110	1290
60133	810	920	1090	1390	1620	60141	760	870	1030	1310	1530
60153	760	870	1030	1310	1530	60154	1030	1170	1390	1770	2070
60155	650	730	870	1110	1290	60160	680	770	910	1160	1350
60161	760	870	1030	1310	1530	60162	670	760	900	1150	1340
60163	790	890	1060	1350	1580	60164	650	740	880	1120	1310
60165	720	820	970	1240	1440	60168	760	870	1030	1310	1530
60169	830	940	1120	1430	1660	60171	690	780	930	1190	1380
60172	820	940	1110	1420	1650	60173	960	1090	1290	1640	1920
60176	710	810	960	1220	1430	60192	1140	1300	1540	1960	2290
60193	940	1070	1270	1620	1890	60194	950	1080	1280	1630	1900
60195	970	1100	1310	1670	1950	60201	980	1110	1320	1680	1960
60202	850	970	1150	1470	1710	60203	1140	1300	1540	1960	2290
60301	940	1070	1270	1620	1890	60302	770	880	1040	1330	1550
60303	760	870	1030	1310	1530	60304	730	830	980	1250	1460
60305	760	860	1020	1300	1520	60402	710	800	950	1210	1410

SCHEDULE B Addendum - FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the County of Cook continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60406	650	740	880	1120	1310	60409	710	810	960	1220	1430
60411	730	830	980	1250	1460	60412	760	870	1030	1310	1530
60415	710	800	950	1210	1410	60419	820	940	1110	1420	1650
60422	1140	1300	1540	1960	2290	60425	740	840	1000	1270	1490
60426	770	880	1040	1330	1550	60428	980	1110	1320	1680	1960
60429	970	1100	1310	1670	1950	60430	720	820	970	1240	1440
60438	710	810	960	1220	1430	60439	680	780	920	1170	1370
60443	950	1080	1280	1630	1900	60445	710	800	950	1210	1410
60452	740	840	1000	1270	1490	60453	740	840	990	1260	1470
60454	760	870	1030	1310	1530	60455	680	780	920	1170	1370
60456	480	540	640	820	950	60457	690	780	930	1190	1380
60458	750	850	1010	1290	1500	60459	750	850	1010	1290	1500
60461	760	870	1030	1310	1530	60462	790	890	1060	1350	1580
60463	1140	1300	1540	1960	2290	60464	1140	1300	1540	1960	2290
60465	760	860	1020	1300	1520	60466	750	850	1010	1290	1500
60467	1140	1300	1540	1960	2290	60469	840	950	1130	1440	1680
60471	810	920	1090	1390	1620	60472	680	780	920	1170	1370
60473	1140	1290	1530	1950	2270	60475	660	750	890	1130	1320
60476	650	740	880	1120	1310	60477	770	880	1040	1330	1550
60478	1140	1300	1540	1960	2290	60480	660	750	890	1130	1320
60482	710	810	960	1220	1430	60487	890	1010	1200	1530	1780
60499	760	870	1030	1310	1530	60501	710	810	960	1220	1430
60513	810	920	1090	1390	1620	60521	910	1040	1230	1570	1830
60525	740	840	1000	1270	1490	60526	810	920	1090	1390	1620
60527	850	960	1140	1450	1690	60534	730	830	980	1250	1460
60546	700	790	940	1200	1400	60558	760	870	1030	1310	1530
60601	1140	1300	1540	1960	2290	60602	1140	1300	1540	1960	2290
60603	1140	1300	1540	1960	2290	60604	1140	1300	1540	1960	2290
60605	1140	1300	1540	1960	2290	60606	1140	1300	1540	1960	2290
60607	1060	1210	1430	1820	2130	60608	640	730	860	1100	1280
60609	670	760	900	1150	1340	60610	1010	1150	1360	1730	2020
60611	1140	1300	1540	1960	2290	60612	790	900	1070	1360	1590
60613	890	1010	1200	1530	1780	60614	1010	1150	1360	1730	2020
60615	740	840	990	1260	1470	60616	740	840	990	1260	1470
60617	670	760	900	1150	1340	60618	790	900	1070	1360	1590
60619	680	770	910	1160	1350	60620	710	800	950	1210	1410
60621	710	800	950	1210	1410	60622	900	1020	1210	1540	1800
60623	650	740	880	1120	1310	60624	790	890	1060	1350	1580
60625	760	860	1020	1300	1520	60626	680	780	920	1170	1370
60628	780	890	1050	1340	1560	60629	710	810	960	1220	1430
60630	760	860	1020	1300	1520	60631	810	920	1090	1390	1620
60632	680	770	910	1160	1350	60633	690	780	930	1190	1380

SCHEDULE B Addendum - FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the County of Cook continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60634	750	850	1010	1290	1500	60636	750	850	1010	1290	1500
60637	730	830	980	1250	1460	60638	710	800	950	1210	1410
60639	740	840	1000	1270	1490	60640	680	780	920	1170	1370
60641	710	810	960	1220	1430	60642	880	1000	1190	1520	1770
60643	740	840	990	1260	1470	60644	700	790	940	1200	1400
60645	770	880	1040	1330	1550	60646	740	840	1000	1270	1490
60647	790	890	1060	1350	1580	60649	670	760	900	1150	1340
60651	780	890	1050	1340	1560	60652	810	920	1090	1390	1620
60653	610	690	820	1050	1220	60654	1140	1300	1540	1960	2290
60655	720	820	970	1240	1440	60656	810	920	1090	1390	1620
60657	940	1060	1260	1610	1870	60659	770	880	1040	1330	1550
60660	680	770	910	1160	1350	60661	1140	1290	1530	1950	2270
60681	760	870	1030	1310	1530	60693	760	870	1030	1310	1530
60706	700	790	940	1200	1400	60707	710	810	960	1220	1430
60712	1140	1300	1540	1960	2290	60714	750	850	1010	1290	1500
60803	670	760	900	1150	1340	60804	650	740	880	1120	1310
60805	800	910	1080	1380	1610	60827	760	860	1020	1300	1520

Town of Mamaroneck Public Housing Agency

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
10501	1240	1300	1540	2000	2360	10502	1750	1830	2170	2820	3330
10503	1240	1300	1540	2000	2360	10504	1750	1830	2170	2820	3330
10505	1240	1300	1540	2000	2360	10506	1360	1420	1680	2190	2570
10507	1450	1510	1790	2330	2740	10510	1570	1640	1940	2520	2970
10511	1210	1270	1500	1950	2300	10514	1710	1790	2120	2760	3250
10517	1710	1790	2120	2760	3250	10518	1240	1300	1540	2000	2360
10519	1240	1300	1540	2000	2360	10520	1200	1260	1490	1940	2280
10522	1390	1450	1720	2240	2640	10523	1750	1830	2170	2820	3330
10526	1240	1300	1540	2000	2360	10527	1240	1300	1540	2000	2360
10528	1750	1830	2170	2820	3330	10530	1410	1480	1750	2280	2680
10532	1240	1300	1540	2000	2360	10533	1510	1580	1870	2430	2870
10535	1580	1640	1950	2540	2990	10536	1390	1450	1720	2240	2640
10537	950	1000	1180	1530	1810	10538	1450	1510	1790	2330	2740
10540	1240	1300	1540	2000	2360	10543	1510	1580	1870	2430	2870
10546	1370	1430	1700	2210	2610	10547	1170	1220	1450	1890	2220
10548	1400	1460	1730	2250	2650	10549	1280	1330	1580	2060	2420
10550	1090	1140	1350	1760	2070	10551	1240	1300	1540	2000	2360
10552	1140	1190	1410	1830	2160	10553	1220	1270	1510	1960	2310
10560	1240	1300	1540	2000	2360	10562	1290	1350	1600	2080	2450
10566	1260	1320	1560	2030	2390	10567	1570	1640	1940	2520	2970

SCHEDULE B Addendum - FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

Town of Mamaroneck Public Housing Agency continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
10570	1530	1600	1900	2470	2910	10573	1390	1450	1720	2240	2640
10576	1750	1830	2170	2820	3330	10577	1240	1300	1540	2000	2360
10578	1240	1300	1540	2000	2360	10580	1660	1730	2050	2670	3140
10583	1750	1830	2170	2820	3330	10588	860	890	1060	1380	1620
10589	1240	1300	1540	2000	2360	10590	1740	1820	2160	2810	3310
10591	1340	1400	1660	2160	2540	10594	1650	1720	2040	2650	3130
10595	1390	1450	1720	2240	2640	10596	980	1020	1210	1570	1850
10597	1240	1300	1540	2000	2360	10598	1360	1420	1680	2190	2570
10601	1250	1310	1550	2020	2380	10602	1240	1300	1540	2000	2360
10603	1380	1440	1710	2220	2620	10604	1440	1500	1780	2320	2730
10605	1270	1320	1570	2040	2410	10606	1450	1510	1790	2330	2740
10607	1670	1750	2070	2690	3170	10701	1100	1150	1360	1770	2080
10702	1240	1300	1540	2000	2360	10703	1130	1180	1400	1820	2150
10704	1230	1280	1520	1980	2330	10705	1070	1120	1330	1730	2040
10706	1210	1270	1500	1950	2300	10707	1420	1480	1760	2290	2700
10708	1440	1500	1780	2320	2730	10709	1410	1480	1750	2280	2680
10710	1130	1180	1400	1820	2150	10801	1210	1270	1500	1950	2300
10802	1240	1300	1540	2000	2360	10803	1280	1340	1590	2070	2440
10804	1520	1590	1880	2450	2880	10805	1270	1320	1570	2040	2410

Chattanooga Housing Authority

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
37302	450	550	680	920	1040	37308	490	590	730	990	1120
37311	490	590	730	990	1120	37315	490	590	730	990	1120
37336	440	530	660	900	1010	37341	630	760	950	1290	1460
37343	520	630	780	1060	1200	37350	490	590	730	990	1120
37351	550	660	820	1120	1260	37353	470	570	710	970	1090
37363	520	630	780	1060	1200	37373	470	570	710	970	1090
37377	520	630	780	1060	1200	37379	510	610	760	1030	1160
37401	490	590	730	990	1120	37402	390	470	590	800	900
37403	390	470	590	800	900	37404	450	550	680	920	1040
37405	490	590	740	1010	1130	37406	410	500	620	840	950
37407	500	600	750	1020	1150	37408	390	470	590	800	900
37409	470	570	710	970	1090	37410	400	480	600	820	920
37411	450	550	680	920	1040	37412	470	570	710	970	1090
37414	490	590	730	990	1120	37415	470	570	710	970	1090
37416	520	630	780	1060	1200	37419	440	530	660	900	1010
37421	530	640	790	1070	1210						

The Housing Authority of the City of Laredo

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
78040	500	540	680	890	920	78041	610	660	830	1090	1130
78043	560	600	760	1000	1030	78045	720	780	980	1290	1330
78046	550	590	740	970	1010						

SCHEDULE D—FY 2015 EXCEPTION FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area name	Space rent
California	Los Angeles-Long Beach, CA HUD Metro FMR Area	$694
	Orange County, CA HUD Metro FMR Area	842
	*Riverside-San Bernardino-Ontario, CA MSA	549
	San Diego-Carlsbad-San Marcos, CA MSA	839
	Santa Rosa-Petaluma, CA MSA	773
	Vallejo-Fairfield, CA MSA	622
Colorado	Boulder, CO MSA	512
Maryland	St. Mary's County	518
Oregon	Bend, OR MSA	361
	Salem, OR MSA	523
Pennsylvania	Adams County	579
Washington	Olympia, WA MSA	628
	Seattle-Bellevue, WA HUD Metro FMR Area	693
West Virginia	Logan County	469
	McDowell County	469
	Mercer County	469
	Mingo County	469
	Wyoming County	469

*50th percentile FMR areas.

[FR Doc. 2014–19390 Filed 8–14–14; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N155; FXES11120100000–145–FF01E00000]

Draft Candidate Conservation Agreement With Assurances and Receipt of Application for an Enhancement of Survival Permit for the Greater Sage-Grouse on Private Rangelands, Baker and Malheur Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for an enhancement of survival permit under the Endangered Species Act of 1973, as amended. The permit application includes a draft candidate conservation agreement with assurances (CCAA) for the greater sage-grouse on private rangelands in Baker and Malheur Counties, Oregon. We invite comments from all interested parties on the application, including the draft CCAA, and a draft environmental action statement prepared pursuant to the requirements of the National Environmental Policy Act.

DATES: To ensure consideration, written comments must be received from interested parties no later than September 15, 2014.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Moore CCAA.

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/.*
- *Email: Gary_Miller@fws.gov.* Include ''Moore CCAA'' in the subject line of the message or comments.
- *U.S. Mail:* U.S. Fish and Wildlife Service, La Grande Field Office, 3502 Highway 30, La Grande, OR 97850.
- *Fax:* 541–962–8581. Include ''Moore CCAA'' in the subject line of the message or comments.
- *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, La Grande Field Office, 3502 Highway 30, La Grande, OR 97850.

FOR FURTHER INFORMATION CONTACT: Gary Miller or Marisa Meyer, U.S. Fish and Wildlife Service, La Grande Field Office (see **ADDRESSES**), telephone: 541–962–8584. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Mr. and Mrs. William Moore (applicants) for an enhancement of survival (EOS) permit under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The permit application includes a candidate conservation agreement with assurances (CCAA) between the applicants and the Service for the greater sage-grouse (*Centrocercus urophasianus*) in Baker and Malheur Counties, Oregon. The Service and the applicants prepared the CCAA to provide the applicants with the opportunity to voluntarily conserve the greater sage-grouse and its habitat while carrying out ranch operations. We have made a preliminary determination that the proposed CCAA and permit issuance are eligible for categorical exclusion under NEPA. The basis for our preliminary determination is contained in an environmental action statement (EAS). We invite comments from all interested parties on the application, including the CCAA and the EAS.

Background Information

Private and other non-Federal property owners are encouraged to enter into CCAAs, in which they voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. Through a CCAA and its associated EOS permit the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided the CCAA is being properly implemented and the EOS permit conditions are met. Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs, which we published in the

Federal Register with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999), as well as our revisions to that policy (69 FR 24084; May 3, 2004).

On March 23, 2010, the Service published a 12-month finding in the **Federal Register** (75 FR 13910) that the greater sage-grouse (rangewide) warrants listing under the ESA as threatened or endangered throughout its range, but this action was precluded by other higher priority listing actions. In anticipation of a future listing decision by the Service, the applicants requested assistance from the Service in developing a CCAA addressing the needs of sage-grouse on lands they own in Malheur County and lands they lease through a long-term lease in Baker County, Oregon. Under the proposed CCAA, the applicants will address threats to the sage-grouse through the implementation of conservation measures that are consistent with their land use activities and the CCAA. Through the EOS permit issued pursuant to section 10(a)(1)(A) of the ESA, the applicants would be authorized to incidentally take the sage-grouse in the course of implementing the CCAA if the species becomes listed under the ESA in the future, as long as the terms and conditions of the permit and the CCAA are followed.

Proposed Action

Consistent with our CCAA Policy, the conservation goal of the proposed CCAA is to encourage enhancement and protection of suitable sage-grouse habitat on the enrolled lands by either maintaining or modifying existing land uses so that they are consistent with the conservation needs of the sage-grouse. We can facilitate this conservation goal by giving non-Federal landowners incentives to implement conservation measures, primarily through regulatory certainty concerning land-use restrictions that might otherwise apply should the sage-grouse become listed under the ESA. The Service proposes to approve the CCAA and to issue an EOS permit to the applicants for incidental take of the greater sage-grouse caused by covered activities, if permit issuance criteria are met. Both the CCAA and the permit would have a term of 30 years.

The area to be addressed under this proposed CCAA (i.e., covered lands) is approximately 7,290 acres that are located in Baker and Malheur Counties, Oregon. Sage-grouse currently use suitable habitat on the covered lands for lekking (breeding displays), late brood-rearing, and wintering. The proposed CCAA describes all of the threats to the sage-grouse that have been identified on the enrolled lands, and the conservation measures the applicants will be implementing to address those threats. Implementation of the conservation measures identified in the CCAA is expected to benefit the sage-grouse by means of (1) maintenance of large tracts of unfragmented and undeveloped land; (2) management of fuels to help reduce the risk of catastrophic wildfires; (3) management of weeds and invasive plant species; and (4) maintenance of healthy, intact sage-grouse lekking, brood-rearing, and wintering habitats.

We have made a preliminary determination that the proposed CCAA and permit issuance are eligible for categorical exclusion under the NEPA. The basis for our preliminary determination is contained in an EAS, which is available for public review (see **ADDRESSES**).

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following: (1) Biological information concerning the greater sage-grouse; (2) relevant data concerning this species; (3) additional information concerning the range, distribution, population size, and population trends of the greater sage-grouse; (4) current or planned activities in the covered area and their possible impacts on the species; (5) identification of any other environmental issues that should be considered with regard to the proposed permit action; and (6) information regarding the adequacy of the CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comments, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII 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 the draft EAS, will be available for public inspection by appointment, during normal business hours, at our La Grande Field Office (see **ADDRESSES**).

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA and NEPA and their respective implementing regulations. We will also evaluate whether issuance of an EOS permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation on the proposed permit action. If we determine that all requirements are met, we will sign the proposed CCAA and issue an EOS permit under section 10(a)(1)(A) of the ESA to the applicants for take of sage-grouse caused by covered activities under the CCAA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Dated: July 30, 2014.

Paul Henson,

State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2014–19371 Filed 8–14–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N176; FXIA16710900000–145–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed

species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 15, 2014. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 15, 2014.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Turtle Conservancy Behler Chelonian Center, Ojai, CA; PRT–34804B

The applicant requests a permit to import biological samples from radiated tortoise (*Astrochelys radiata*) and angulated tortoise (*A. yniphora*) from the wild in Madagascar for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Avian Behavior International, LLC, Escondido, CA; PRT–28369B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, golden conure (*Aratinga guarouba*), Cuban amazon (*Amazona leucocephala*), and red-crowned crane (*Grus japonensis*). The purpose of the permit is to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: White Oak Conservancy Foundation, Yulee, FL; PRT–36263B

The applicant requests a permit to import one Southern black rhinoceros (D*iceros bicornis minor*) that is captive-bred for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Boulder Ridge Ranch LLC, Alto, MI; PRT–80856A

The applicant requests an amendment of his captive-bred wildlife registration under 50 CFR 17.21(g) to add the Saltwater crocodile (*Crocodylus porosus*), red-crowned crane (*Grus japonensis*), Red-ruffed lemur (*Varecia rubra*), Grevy's zebra (*Equus grevyi*), and Przewalski's horse (*Equus przewalskii*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Adam Rosenblatt, New Haven, CT; PRT–33280B

The applicant requests a permit to import biological samples from black caiman (*Melanosuchus niger)* from the wild in Guyana for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jan Lundberg, Indianapolis, IN; PRT–40124B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Spiegel TV, Hamburg, Germany; PRT–40066B

The applicant requests a permit to photograph polar bears (*Ursus maritimus*) in the vicinity of Kaktovik, Barter Island, Barrow, Alaska, from land based vehicles and boats for commercial and educational purposes. This notification covers activities to be conducted by the applicant for less than a 1-year period.

Applicant: University of Florida, Aquatic Animal Health Program, Gainesville, FL; PRT–067116

The applicant requests renewal and amendment of a permit to take wild and captive-held Florida manatees (*Trichechus manatus*) for the purpose of scientific research to better understand manatee physiology and health and to investigate diagnostic applications. The applicant would also import and export biological species from all sirenians. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–19341 Filed 8–14–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N175; FXIA16710900000–145–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Endangered Species

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
28675B	Steven Hornady	79 FR 14528; March 14, 2014	06/03/2014
28677B	Jerry Brenner	79 FR 14528; March 14, 2014	06/03/2014
28678B	Alan Sackman	79 FR 14528; March 14, 2014	06/03/2014
28679B	Barbara Sackman	79 FR 14528; March 14, 2014	06/03/2014
28680B	Trevor Ahlberg	79 FR 14528; March 14, 2014	06/03/2014
28682B	Daniel Smith	79 FR 14528; March 14, 2014	06/03/2014
28684B	Renee Snider	79 FR 14528; March 14, 2014	06/03/2014
28687B	Craig Boddington	79 FR 14528; March 14, 2014	06/03/2014
28691B	Joseph Smith	79 FR 14528; March 14, 2014	06/03/2014
29431B	Richard Bisbee	79 FR 18575; April 2, 2014	07/30/2014
34806B	Antonia Hall	79 FR 28941; May 20, 2014	07/29/2014
32349B	Indianhead Ranch	79 FR 28941; May 20, 2014	07/30/2014

Marine Mammals

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
31599B	Patricia Tucker, Feathering Crest Aviary.	79 FR 24445; April 30, 2014	July 7, 2014.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–19340 Filed 8–14–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–16302; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 19, 2014.

Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 2, 2014. 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.

Paul Lusignan,

Acting Chief, National Register of Historic Places/, National Historic Landmarks Program.

DELAWARE

Sussex County

Adams Home Farm, 15293 Adams Rd., Greenwood, 14000532

GEORGIA

Chatham County

Kensington Park—Groveland Historic District, Roughly bounded by DeRenne & Waters Aves., Abercorn & Johnston Sts., Chatham, 14000533

NEW JERSEY

Burlington County

Bordentown Historic District (Boundary Increase), 1 Spring St., Bordentown, 14000534

Hudson County

Hoboken Free Public Library and Manual Training School, 500 Park Ave., Hoboken, 14000535

Monmouth County

Asbury Park Commercial Historic District, Roughly bounded by 500, 600, 700 blks., of Bond St., Cookman & Mattison Aves. between Lake & Bangs Aves., Asbury Park, 14000536

NEW YORK

Monroe County

First Unitarian Church, 220 Winton Rd. S., Rochester, 14000537

Nassau County

Barstow, William, Mansion, 300 Steamboat Rd., Kings Point, 14000539

United States Merchant Marine Academy, 300 Steamboat Rd., Kings Point, 14000538

Suffolk County

Mollenhauer, John, House, 60 Awixa Ave., Bay Shore, 14000540

Wayne County

Lapham, Ambrose S., House, 352 W. Jackson St., Palmyra, 14000541

Westchester County

Glenwolde Park Historic District, Glenwolde Park, Walter St. & Willowbrook Ave., Tarrytown, 14000542

Metropolitan Life Insurance Company Hall of Records, 759 Palmer Rd., Yonkers, 14000543

NORTH CAROLINA

Buncombe County

West Asheville—Aycock School Historic District (Boundary Increase), 444 Haywood Rd., Asheville, 14000544

Jackson County

Downtown Sylva Historic District, Roughly bounded by Southern RR., Main, Landis & Jackson Sts., Sylva, 14000545

OHIO

Lucas County

St. Clair Street Historic District (Boundary Increase—Decrease), 28 N. St Clair, 23–29 & 31 Summit, Toledo, 14000546

Montgomery County

Weustoff and Getz Company, 210 Wayne Ave., Dayton, 14000547

Summit County

Longwood Manor, 1634 E. Aurora Rd., Macedonia, 14000548

SOUTH CAROLINA

Greenville County

Brandon Mill, 25 Draper St., Greenville, 14000317

TEXAS

Travis County

Rosewood Courts Historic District, Roughly bounded by Rosewood Ave., Chicon & Poquito Sts., Austin, 14000549

VIRGINIA

Staunton Independent city

Washington, Booker T., High School, 1114 W. Johnson St., Staunton (Independent City), 14000550

[FR Doc. 2014–19325 Filed 8–14–14; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Supplemental Environmental Assessment and Finding of No Significant Impact for Flood Control Improvements to the Rio Grande Canalization Project in Vado, New Mexico

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Notice of Availability of Final Supplemental Environmental Assessment (SEA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice that the Final Supplemental Environmental Assessment and Finding of No Significant Impact for *Flood Control Improvements to the Rio Grande Canalization Project in Vado, New Mexico* are available.

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4703, email: *gilbert.anaya@ibwc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action

The USIBWC is considering relocating the Rio Grande river channel in the Canalization Project Levee System in a 1.08 mile stretch in Vado, New Mexico and create new levees where no flood control measures exist in an effort to meet current flood control requirements. The Preferred Alternative would relocate the river channel approximately 100 feet west due to the river channel moving east against the Burlington Northern Santa Fe (BNSF) railroad. The preferred alternative would then create a new levee that would tie into existing levee structures to the north and south of the project area. These improvements will be subject to availability of funds.

The Supplemental Environmental Assessment assesses potential environmental impacts of the No Action Alternative and the Preferred

Alternative. Two additional alternatives were considered but were not evaluated as they were determined to be more costly, more difficult to achieve, less reliable, and more difficult to maintain. Potential impacts on natural, cultural, and other resources were evaluated. A Finding of No Significant Impact was issued for the Preferred Alternative based on a review of the facts and analyses contained in the Supplemental Environmental Assessment when taking the proposed mitigation into account.

Alternatives Considered

A No Action Alternative was evaluated for the flood control improvements to the Rio Grande Canalization Project Levee System. This alternative would retain the existing configuration of the system, and the level of protection currently associated with this system. Under severe storm events, current containment capacity may be insufficient to fully control Rio Grande flooding, with risks to personal safety and potential property damage, as well as risks to the railroad system.

Design alternatives were conducted and evaluated in the final design memorandum entitled ''*Rehabilitation Improvements for the Vado East Levee, Doña Ana County, New Mexico,*'' dated July 29, 2011. The final design memorandum evaluated three alternatives as described below.

Preferred Alternative. The Preferred Alternative would allow the levees to meet the design criteria to contain flood flows and to comply with FEMA specifications for the levees in the Rio Grande Canalization Project Levee System. This would be accomplished by creating a flood containment levee 1.08 miles in length that would continue from the current levee system to the north and south of the project area. Fill material, obtained from commercial sources would be used to create a levee to meet the 3 foot freeboard criterion established by the Federal Emergency Management Agency (FEMA). In order to create the levee in this area, the river channel would have to be relocated 100 feet to the west and the floodplain would have to be re-established on the eastern side of the river.

Flood Wall Alternative. This alternative would construct a flood wall that would tie into the existing levee system to the north and south of the project. The flood wall would require dredging the river channel along the section that is currently against the railroad easement and construction of a concrete or metal wall that would extend 888 feet along the river and existing flood plain to the current levees. The wall would be 8 feet tall above the flood plain and require pilings to be driven 40 feet in the ground.

Sheet Pile Wall Alternative. This alternative would construct a sheet pile wall instead of the flood wall. This wall would follow the same requirements but would consist of interlocked metal sheets driven into the ground instead of a concrete wall. Therefore, the pilings would also have to be driven 40 feet into the ground but would instead of a few like in the flood wall; all of the pilings across the entire length would have to be driven down to bedrock.

Availability

Single hard copies of the Final Supplemental Environmental Assessment and Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Web page: *www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html*.

Rebecca Rizutti,

General Counsel.

[FR Doc. 2014–19373 Filed 8–14–14; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Second Review)]

Refined Brown Aluminum Oxide From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: May 9, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 9, 2014, the Commission determined that the domestic interested party group response to its notice of institution (79 FR 6225, February 3, 2014) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 29, 2014, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 4, 2014, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by C–E Minerals, Inc.; Imerys Fused Minerals Niagara Falls, Inc.; US Electrofused Minerals, Inc.; and Washington Mills Co., Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

information) pertinent to the review by September 4, 2014. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 16, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–19389 Filed 8–14–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–030]

Government in the Sunshine Act Meeting Notice; Rescheduling of Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE AND TIME: August 14, 2014 at 11:00 a.m.

NEW DATE AND TIME: August 22, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission hereby gives notice that the meeting of August 14, 2014 at 11:00 a.m. has been rescheduled for August 22, 2014 at 11:00 a.m.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this change was not possible.

By order of the Commission:

Issued: August 13, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–19543 Filed 8–13–14; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–028]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 26, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1225 (Final)(Ferrosilicon from Venezuela). The Commission is currently scheduled to complete and file its determination and views of the Commission on September 8, 2014.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 12, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–19485 Filed 8–13–14; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–029]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: August 27, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1233, 1234, and 1236 (Final) (Grain-Oriented Electrical Steel from Germany, Japan, and Poland). The Commission is currently scheduled to complete and file its determinations and views of the Commission on September 9, 2014.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 12, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–19486 Filed 8–13–14; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Public Availability of FY 2012 Service Contract Inventory Analysis, FY 2013 Service Contract Inventory, and FY 2013 Service Contract Inventory Planned Analysis

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the U.S. International Trade Commission is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventory Analysis, the FY 2013 Service Contract Inventory, and the FY 2013 Service Contract Inventory Planned Analysis. The FY 2012 inventory analysis provides information on specific service contract actions that were analyzed as part of the FY 2012 inventory. The 2013 inventory provides information on service contract actions over $25,000 that were made in FY 2013. The inventory information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budge's Office of Federal Procurement Policy

(OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The FY 2013 inventory planned analysis provides information on which functional areas will be reviewed by the agency. The United States International Trade Commission has posted its FY 2013 inventory, FY 2013 planned analysis, and FY 2012 inventory analysis at the following link: *http://www.usitc.gov/procurement/.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Debra Bridge, U.S. International Trade Commission, Office of Procurement, 500 E Street SW., Washington, DC 20436, or at 202–205–2004 or *debra.bridge@usitc.gov.*

By order of the Commission.

Issued: August 11, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–19352 Filed 8–14–14; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure have proposed amendments to the following rules and forms:

Appellate Rules 4, 5, 21, 25, 26, 27, 28.1, 29, 32, 35, and 40, and Forms 1, 5, 6, and New Form 7

Bankruptcy Rules 1010, 1011, 2002, 3002, 3002.1, 3007, 3012, 3015, 4003, 5009, 7001, 9006, 9009, and New Rule 1012, and Official Forms 11A, 11B, 106J, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, 207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 312, 313, 314, 315, 401, 410, 410A, 410S1, 410S2, 416A, 416B, 416D, 424, and Instructions, and New Official Forms 106J–2 and 113

Civil Rules 4, 6, and 82

Criminal Rules 4, 41, and 45

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules and Forms in Phoenix, Arizona, on January 9, 2015, and in Washington, DC, on February 12, 2015;
- Bankruptcy Rules and Official Forms in Washington, DC, on January 23, 2015, and in Pasadena, California, on February 6, 2015;
- Civil Rules in Washington, DC, on October 31, 2014, and in Phoenix, Arizona, on January 9, 2015; and
- Criminal Rules in Washington, DC, on November 5, 2014, and in Nashville, Tennessee, on January 30, 2015.

Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2014, but no later than February 17, 2015. Written comments must be submitted electronically, following the instructions provided at: *http://www.uscourts.gov/rulesandpolicies/rules/proposed-amendments.aspx.* In accordance with established procedures, all comments submitted are available for public inspection.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Web site at *http://www.uscourts.gov/rulesandpolicies/rules/proposed-amendments.aspx.*

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE., Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 6, 2014.

Jonathan C. Rose,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2014–18965 Filed 8–14–14; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; State and Local White Collar Crime Program, 2014

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 63, page 18582, on April 2, 2014, allowing a 60-day comment period. The reference data for this collection has changed from 2013 to 2014.

DATES: Comments are encouraged and will be accepted for an additional ''thirty days'' until September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New data collection, State and Local White Collar Crime Program, 2014.

(2) *The title of the form/collection:* State and Local White Collar Crime Program or SLWCCP, 2014.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels are SLWCCP–2014, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract Primary:* State, DC, and territory Attorney General offices.

Abstract: The State and Local White Collar Crime Program (SLWCCP) will survey all state Attorney General (AG) offices on their criminal and civil white collar crime cases through a web-based questionnaire. For this collection, a white collar offense is defined as ''any violation of law committed through non-violent means, involving lies, omissions, deceit, misrepresentation, or violation of a position of trust, by an individual or organization for personal or organizational profit.'' The SLWCCP will obtain data on the types of offenses each AG office handles, the number of cases, the types of defendants (individual vs. business), and the outcomes of the cases. The SLWCCP will also collect information on AG office cooperation with regulatory agencies and federal and local governments.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 56 respondents with an average of 31 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,736 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington DC 20530.

Dated: August 12, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–19367 Filed 8–14–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Clean Water Act

On August 11, 2014, the Department of Justice lodged a proposed settlement agreement (the ''Settlement Agreement'') with the United States Bankruptcy Court for the Southern District of New York in the bankruptcy case of Metro Affiliates, Inc., and its affiliates (collectively ''Metro''), *In re Metro Affiliates, Inc., et al.,* Case No. 13–13591.

The parties to the proposed Settlement Agreement are Metro Affiliates, Inc., and its affiliates (the ''Debtors''), the United States, and the Liquidating Trust established in the bankruptcy. The Settlement Agreement provides for a $400,000 allowed general unsecured claim for the United States on behalf of EPA, subject to any valid right of setoff, and $25,000.00 of allowed administrative expenses, again subject to any valid right to setoff.

The Settlement Agreement resolves the claims of the Environmental Protection Agency (''EPA'') against Debtors for civil penalties resulting from violations of the Clean Water Act, 33 U.S.C. §§ 1311, 1318, and 1342, at facilities maintained by the following debtors: Amboy Bus Company, Inc., Raybern Bus Service, Inc., and Staten Island Bus Company, Inc. Courtesy Bus Company, Inc., and Atlantic Express of New Jersey, Inc., and Staten Island Bus Company, Inc.. These violations included: failing to obtain stormwater discharge permits at nine locations; continuing discharges of stormwater associated with industrial activity without a permit; and, after obtaining permits for certain locations, violating the terms of those permits on multiple occasions. The locations at issue are the following: 399 Exterior Street, 586 River Avenue, Bronx, NY 10451; 2352 and 2384 East 69th Street, Brooklyn, NY 11234; 500 Oak Point Avenue, Bronx, NY 10474; 46–81 Metropolitan Avenue, Ridgewood, NY 11385; 127–45 34th Avenue, Flushing, NY 11354; 107 and 3535 Lawson Boulevard, Oceanside, NY 11572; 91 Baiting Place Road, Farmingdale, NY 11735; 260 and 280 Meredith Avenue, Staten Island, NY 10314; 107 How Lane, New Brunswick, NJ 08901, and 230 Red Lion Road, Vincentown, NJ 08088.

As part of the Settlement Agreement, Defendants will receive a covenant not to file a civil action or take administrative action against the Debtors for civil penalties under Section 309 of the Federal Water Pollution Control Act, 33 U.S.C. § 1319, with respect to the violations alleged in the proofs of claim and administrative expense request filed by the United States on behalf of EPA in the bankruptcy, through the date of lodging of the Settlement Agreement.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Metro Affiliates, Inc., et al.,* D.J. Ref. No. 90–5–1–1–11079. All comments must be received no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Public comments timely received will be filed on the public court docket. During the public comment period, the Settlement Agreement may be examined and downloaded at a Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–19342 Filed 8–14–14; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Wood Protection Association, Inc.

Notice is hereby given that, on July 7, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Wood Protection Association, Inc. (''AWPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Wood

Protection Association, Inc., Birmingham, AL. The nature and scope of AWPA's standards development activities are: to develop standards for products and processes which improve resistance of wood to degradation, standards for preserved wood products, standards for evaluation of wood protectants, chemical analysis methods, quality control procedures, and other miscellaneous related standards.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–19322 Filed 8–14–14; 8:45 am]

BILLING P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Precast/Prestressed Concrete Institute

Notice is hereby given that, on July 17, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Precast/Prestressed Concrete Institute (''PCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Precast/Prestressed Concrete Institute, Chicago, IL. The nature and scope of PCI's standards development activities are: to develop and maintain voluntary consensus standards for the design, detailing, fabrication, transportation, and erection of precast and precast, prestressed concrete products.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–19318 Filed 8–14–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OCR) Docket No. 1668]

Hearings of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold hearings in Washington, DC, on August 28, 2014. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of sexual victimization in U.S. prisons and jails, and the common characteristics of U.S. prisons and jails with the highest and lowest incidence of sexual victimization, respectively, based on anonymous surveys by the BJS of inmates in representative samples of U.S. prisons and jails. In May 2013, the BJS issued the report *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12.* The report provides a listing of prisons and jails grouped according to the prevalence of reported sexual victimization, and formed the basis of the Panel's decision about which prison and jail facilities would be the subject of testimony. These hearings will supplement the record that the Panel developed during its January 8, 2014, hearings on sexual victimization in certain U.S. prisons and jails.

DATES: The hearing schedule is as follows:

1. Thursday, August 28, 2014, 8:30 a.m. to 11:15 a.m.: Mabel Bassett Correctional Center, Oklahoma Department of Corrections—facility with a high prevalence of sexual victimization; Jackie Brannon Correctional Center, Oklahoma Department of Corrections—facility with a low prevalence of sexual victimization; Richard L. Smothermon, District Attorney, 23rd Judicial District of Oklahoma; and Viktoria Kristiansson, Attorney Advisor, AEquitas: The Prosecutors' Resource on Violence Against Women.

2. Thursday, August 28, 2014, 11:15 a.m. to 12:00 p.m.: Cameron County Carrizales-Rucker Detention Center, Cameron County, Tex., Sheriff's Office—facility with a low incidence of sexual victimization.

ADDRESSES: The hearings will take place at the Office of Justice Programs Building, Main Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Christopher P. Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov,* (202) 307–0690. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2012)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from these supplemental hearings will assist the Panel in carrying out its statutory obligations. The witness list is subject to amendment; please refer to the Review Panel on Prison Rape's Web site at *http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm* for any updates regarding the hearings schedule. Space is limited at the hearings location. Members of the public who wish to attend the hearings in Washington, DC, must present government-issued photo identification upon entrance to the Office of Justice Programs. Special needs requests should be made to Christopher P. Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov* or (202) 307–0690, at least one week before the hearings.

Michael Alston,

Director, Office for Civil Rights, Office of Justice Programs.

[FR Doc. 2014–19298 Filed 8–14–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ionizing Radiation Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Ionizing Radiation Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 15, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201406-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Ionizing Radiation Standard information collection codified in regulations 29 CFR 1910.1096. Several provisions of the Standard specify information collection requirements, including: monitoring worker exposure to ionizing radiation, instructing workers on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting caution signs at radiation areas, reporting worker overexposures to the OSHA, maintaining exposure records, and providing exposure records to current and former workers. The purpose of the Standard and its information collection requirements is to document that employers are providing their workers with protection from hazardous ionizing radiation exposure. Occupational Safety and Health Act sections 6 and 8 authorize this information collection. *See* 29 U.S.C. 655 and 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0103.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 1, 2014 (79 FR 18318).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0103. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Ionizing Radiation Standard.

OMB Control Number: 1218–0103.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 12,719.

Total Estimated Number of Responses: 256,914.

Total Estimated Annual Time Burden: 45,217 hours.

Total Estimated Annual Other Costs Burden: $5,691,144.

Dated: August 8, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–19308 Filed 8–14–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Refuse Piles and Impoundment Structures—Recordkeeping and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Refuse Piles and Impoundment Structures—Recordkeeping and Reporting Requirements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 15, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201403-1219-006* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Refuse Piles and Impoundment Structures—Recordkeeping and Reporting Requirements information collection codified in regulations 30 CFR 77.215 and 77.216. These regulations require a coal mine operator to submit an annual report and certification on refuse piles and impoundments to the MSHA and to develop and maintain a record of the results of each weekly examination and instrumentation monitoring. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0015.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 8, 2014 (79 FR 19389).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0015. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Refuse Piles and Impoundment Structures—Recordkeeping and Reporting Requirements.

OMB Control Number: 1219–0015.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 629.

Total Estimated Number of Responses: 31,365.

Total Estimated Annual Time Burden: 76,572 hours.

Total Estimated Annual Other Costs Burden: $3,456,928.

Dated: August 11, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–19315 Filed 8–14–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification and Qualification To Examine, Test, and Operate Hoists, and To Perform Other Duties

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Certification and Qualification to Examine, Test, and Operate Hoists, and to Perform Other Duties,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 15, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201406-1219-006* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not

toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Certification and Qualification to Examine, Test, and Operate Hoists, and to Perform Other Duties information collection. More specifically, this ICR pertains to the certification of certain persons to perform specific examinations and tests. This ICR also seeks to extend PRA approval for procedures under which a coal mine operator is required to maintain a list of certified and qualified persons, and to develop an approved training plan for hosting engineers or host operators. A respondent uses the Safety and Health Activity Certification or Hoisting Engineer Qualification Request, Form MSHA–5000–41, in order to comply with the subject information collection requirements. Federal Mine Safety and Health Act of 1977 section 103(h) authorizes this information collection. *See* 30 U.S.C. 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0127.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 8, 2014 (79 FR 19390).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0127. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Certification and Qualification to Examine, Test, Operate Hoists, and to Perform Other Duties.

OMB Control Number: 1219–0127.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 1,232.

Total Estimated Number of Responses: 5,659.

Total Estimated Annual Time Burden: 548 hours.

Total Estimated Annual Other Costs Burden: $71.

Dated: August 11, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–19311 Filed 8–14–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before September 15, 2014.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2014–026–C.

Petitioner: Covol Fuels No. 3, LLC, 10156 US Hwy 25E, Pineville, Kentucky 40977.

Mine: Crockett, MSHA I.D. No. 15–12682, located in Bell County, Kentucky; Coarse Coal Refuse Fill #5, Site I.D. No. KY07–12682–05.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles, general).

Modification Request: The petitioner requests a modification of the existing standard to permit coarse refuse to be placed over abandoned underground mine openings in the Hazard #7 coal seam during the construction of Coarse Coal Refuse Fill #5. The petitioner states that there are no steamlines associated with this proposal.

The petitioner further states that:

(1) The openings at issue in this request have been abandoned since January 15, 2002 when the final map for the Glendon #2 Mine was filed. These openings represent no threat to underground miners because all of the affected mine workings/openings are abandoned and there are no active mine workings above or below the abandoned coal seam or within miles of the coarse refuse fill.

(2) Covol Fuels No. 3 proposes to construct Coarse Coal Refuse Fill #5 in a small unnamed watershed within the Little Camp Branch watershed immediately east of the existing Little Camp Branch Slurry Impoundment along an existing bench on the Hazard #7 coal seam. There are a total of four underground mine openings located within the area where Coarse Coal Refuse Fill #5 will be constructed that will be covered. The location of each of these mine openings is identified on the Plan View Map provided in this petition.

(3) The Hazard #7 coal seam in this area was mined intermittently between 1996 and January 15, 2002, by several different companies, with the last company being Parton Brothers Contracting, Inc., at the Glendon #2 Mine, MSHA I.D. No. 15–18275, Bell County, Kentucky. Provided with this petition is a copy of the ''Final'' underground mine map for Glendon #2 Mine dated 01/15/2002.

(4) Coarse Refuse Fill #5 will extend along an existing bench on the Hazard #7 coal seam from near the Little Camp Branch Slurry Impoundment northeast approximately 900 feet to the abandoned underground mine site where the four relevant mine entries are located. This abandoned underground mine site extends an additional 400 feet for an approximate total of 1,300 feet of the bench that will be used for coarse refuse storage.

(5) This petition does not apply to the approximately 900 feet of the Hazard #7 bench. This petition only applies to the area where the four underground mine openings are located.

(6) Based on the elevations on the ''Final'' underground map, the floor of the coal seam dips slightly to the southwest, therefore, there is a potential for drainage out of the mine. In order to prevent the buildup of hydrostatic pressure within the abandoned underground workings, a drainage pipe will be installed in the abandoned fan entry as identified on the design plans for this site. A drainage pipe will not be installed in the remaining three entries.

(7) All four of the entries will be covered and sealed in exactly the same manner except for the entry with the drainage pipe. Generally, each entry will be cleared and opened to the extent possible. Durable well-graded sandstone will be backstowed into the entry for a depth of 10 to 20 feet. The best available clay/spoil/soil material will then be placed against the backstowed mine entry and the entire exposed coal seam to a minimum of 2 feet above the top of the coal seam to isolate the coal seam from the coarse refuse. Coarse refuse will then be placed over the entire bench in 1-foot thick horizontal lifts and compacted to a minimum of 90 percent of standard proctor. The outslope of the fill will be maintained at 2H:1V or 27. As the coarse refuse fill is constructed, the outslope of the fill will be covered with a minimum of 2 feet of the best available soil/cover material. The site will then be vegetated with a variety of grasses, legumes and trees to support the post-mining land use.

(8) For the single entry that will be installed with a drainage pipe, the pipe will be a 10-inch SCR11 HDPE type pipe. This pipe will be extended into the entry a minimum of 30 to 40 feet. The end of the pipe will be left open but will be slightly elevated above the floor of the mine during installation of the pipe to prevent it from being plugged during installation. The portion of the pipe that extends into the mine entry, including the backstowed sandstone, will be perforated. Every 18-inch a total of four ¾-inch diameter holes will be drilled at the quarter points to ensure that any water that accumulates in the mine will be able to drain from the mine. Once the drainage pipe exits the mine, it will be placed on a minimum of 1 percent grade all the way to exit the outslope of the fill to ensure that all water that accumulates in the mine will drain from the mine.

Dated: August 12, 2014.

Sheila McConnell,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 2014–19355 Filed 8–14–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 14–078]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 6,730,498, Production of Functional Proteins: Balance of Shear Stress and Gravity, NASA Case No. MSC–22859–1; USPN 6,946,246, Production of Functional Proteins: Balance of Shear Stress and Gravity, NASA Case No. MSC–22859–2; USPN 7,198,947, Production of Functional Proteins: Balance of Shear Stress and Gravity, NASA Case No. MSC–22859–3; and USPN 7,972,821, Production of Functional Proteins: Balance of Shear Stress and Gravity, NASA Case No. MSC–22859–5 to GRoK Technologies, LLC, having its principal place of business in Houston, Texas. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the

extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office/AO52, Johnson Space Center, Houston, TX 77058, (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov*.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2014–19339 Filed 8–14–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities (NEH) will hold eleven meetings of the Humanities Panel during September, 2014 as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at Constitution Center, 400 7th Street SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: September 03, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Literature and Art for the Digital Projects for the Public grant program, submitted to Division of Public Programs.

2. Date: September 04, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications for the Preservation and Access Research and Development grant program, submitted to the Division of Preservation and Access.

3. Date: September 04, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Africa, the Middle East, and Asia for the Bridging Cultures through Film grant program, submitted to the Division of Public Programs.

4. Date: September 09, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of U.S. History for the Digital Projects for the Public grant program, submitted to the Division of Public Programs.

5. Date: September 09, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: Conference Call.
This meeting will discuss applications for the Humanities Initiatives at Historically Black Colleges and Universities grant program, submitted to the Division of Education Programs.

6. Date: September 10, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of the Americas, U.S. and International for the Bridging Cultures through Film grant program, submitted to the Division of Public Programs.

7. Date: September 10, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: Conference Call.
This meeting will discuss applications for the Humanities Initiatives at Hispanic-Serving Institutions grant program, submitted to the Division of Education Programs.

8. Date: September 11, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: Conference Call.
This meeting will discuss applications for the Humanities Initiatives at Hispanic-Serving Institutions grant program, submitted to the Division of Education Programs.

9. Date: September 11, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Europe and Russia for the Bridging Cultures through Film grant program, submitted to the Division of Public Programs.

10. Date: September 15, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of African American History and Culture and Historic Sites for the Digital Projects for the Public grant program, submitted to the Division of Public Programs.

11. Date: September 16, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of Transcultural for the Digital Projects for the Public grant program, submitted to the Division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: August 12, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–19366 Filed 8–14–14; 8:45 am]

BILLING CODE 7536–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2014–66; Order No. 2147]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Global Expedited Package Services 3 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 18, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On August 8, 2014, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2014–66 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 18, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2014–66 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 18, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–19304 Filed 8–14–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 8, 2014 (Notice).

POSTAL SERVICE

International Product Change—Global Reseller Expedited Package Contracts 4

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby gives notice of its filing a request with the Postal Regulatory Commission to add Global Reseller Expedited Package Contracts 4 to the Competitive Products List.

DATES: *Effective Date:* August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin, (202) 268–2537.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, on August 8, 2014, it filed with the Postal Regulatory Commission, a Request to Add Global Reseller Expedited Package Contracts 4 (GREP Contracts 4) to the Competitive Products List, and Notice of Filing a Global Reseller Expedited Package 4 Negotiated Service Agreement. The documents are available at *http://www.prc.gov,* Docket Nos. MC2014–38 and CP2014–67.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–19328 Filed 8–14–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31203; File No. 812–14138]

Principal Funds, Inc., et al.; Notice of Application

August 11, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY: *Summary of Application:* Applicants request an order that would amend and supersede a prior order (the ''Non-Affiliated Sub-Adviser Order'')[1] that permits them to enter into and materially amend subadvisory agreements for certain multi-managed funds with non-affiliated sub-advisers without shareholder approval and grants relief from certain disclosure requirements. The requested order would permit applicants to enter into, and amend, such agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval.

Applicants: Principal Funds, Inc. (''PFI'') and Principal Variable Contracts Funds, Inc. (''PVC'', each an ''Investment Company'' and collectively, the ''Investment Companies''), and Principal Management Corporation (''PMC'').

DATES: *Filing Dates:* The application was filed on March 27, 2013, and amended on June 3, 2013, November 15, 2013, April 10, 2014 and July 30, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 5, 2014 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Investment Company is a Maryland corporation which is registered with the Commission as an open-end management investment company under the Act. Each Investment Company offers multiple series of shares (''Series'') with its own

[1] *Principal Management Corporation, et al.,* Investment Company Act Release Nos. 23613 (Dec. 21, 1998) (notice) and 23655 (Jan. 19, 1999) (order).

distinct investment objective, policies and restrictions. Each Series has, or will have, as its investment adviser, PMC, or another investment adviser controlling, controlled by or under common control with PMC or its successors (each, an ''Adviser'' and, collectively with the Investment Companies, the ''Applicants'').[2] PMC is an Iowa corporation and an indirect wholly-owned subsidiary of Principal Financial Group, Inc., the ultimate parent entity of Principal Life Insurance Company (''Principal Life''), an Iowa stock life insurance company.[3]

2. PMC serves as the investment adviser to each Series pursuant to an investment advisory agreement with the applicable Investment Company (''Investment Management Agreement''). The Investment Management Agreement for each existing Series was approved by the board of directors of the applicable Investment Company (each a ''Board''),[4] including a majority of the directors who are not ''interested persons'', as defined in section 2(a)(19) of the Act, of the Investment Company, a Series or the Adviser (''Independent Board Members'') and by the shareholders of that Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of each Investment Management Agreement comply with section 15(a) of the Act. Any future Investment Management Agreement also will comply with section 15(a) of the Act and will be similarly approved.

3. Under the terms of each Investment Management Agreement, PMC, subject to the supervision of the applicable Board, provides investment advisory, research and statistical services, furnishes the Board a recommended investment program for each Series consistent with its investment objective, strategies, policies and restrictions, is authorized to implement such investment programs by placing orders for the purchase and sale of securities and assists the officers of the Investment Company regarding the general conduct of its investment business. PMC periodically reviews a Series' investment policies and strategies and based on the need of a particular Series, may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, PMC receives an investment management fee from the Series based on a percentage of the average net assets of the Series. The terms of each Investment Management Agreement permit PMC, subject to the approval of the applicable Board, including a majority of the Independent Board Members, and the shareholders of the applicable Series (if required), to delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more sub-advisers.

4. Pursuant to the terms of each Investment Management Agreement, PMC's responsibilities with respect to each such Series include: (i) Recommending the selection, retention, removal or replacement of sub-advisers; (ii) determining the portion of the Series' assets to be managed by any given sub-adviser; and (iii) reallocating those assets as necessary from time to time among PMC and/or the sub-advisers retained for management of the assets of the Series. In addition, PMC monitors and reviews each sub-adviser's performance and its compliance with the Series' investment objective, strategies, policies and restrictions.

5. PMC has entered into sub-advisory agreements with various sub-advisers to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement (as defined below) comply fully with the requirements of section 15(a) of the Act and were approved by the applicable Board, including a majority of the Independent Board Members, and, to the extent that the Non-Affiliated Sub-Adviser Order did not apply, the shareholders of the Subadvised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The specific investment decisions for each Subadvised Series will be made by the Sub-Adviser which has discretionary authority to invest the assets or a portion of the assets of that Subadvised Series, subject to the general supervision of the Adviser and the Board. The Adviser agrees to pay each Sub-Adviser a fee based generally on a percentage of the average net assets of the applicable Subadvised Series or portion thereof overseen by the Sub-Adviser.

6. Applicants request an order to permit the Adviser, subject to the approval of the Board, including a majority of the Independent Board Members, to, without obtaining shareholder[5] approval: (i) Select Sub-Advisers[6] to manage all or a portion of the assets of a Series and enter into sub-advisory agreements with the Sub-Advisers (''Sub-Advisory Agreements''), and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[7] The requested relief will not extend (i) to any sub-adviser, other than a Wholly-Owned Sub-Adviser, which is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series; and (ii) to Cliffwater LLC, a non-affiliated sub-adviser of the PFI Global Multi-Strategy Fund which does not manage a portion of the assets of such Fund but provides services to PMC with respect to selecting, monitoring, evaluating and allocating assets among the other Sub-Advisers of PFI Global Multi-Strategy

[2] The Adviser is, and any future Adviser also will be, registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Applicants request that the relief apply to the Applicants, as well as to any existing or future Series and any other existing or future registered open-end management investment company or series thereof, including those that serve as funding media for variable insurance products offered by Principal Life, its affiliated insurance companies and other, unaffiliated insurance companies, that intends to rely on the order in the future and that is advised by the Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Subadvised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. All Series that currently are, or that currently intend to be, Subadvised Series are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Adviser (as defined below), the name of the Adviser that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the Sub-Adviser.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series.

[5] The term ''shareholder'' includes variable life and variable annuity contract owners having the voting interest in a separate account for which a Series serves as a funding medium.

[6] A ''Sub-Adviser'' is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Series, or (2) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the applicable Investment Company, Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to a Series (each a ''Non-Affiliated Sub-Adviser'').

[7] Shareholder approval will be required for any other sub-adviser changes and material amendments to sub-advisory agreements with respect to sub-advisers other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes are referred to as ''Ineligible Sub-Adviser Changes'').

Fund (collectively, ''Excluded Sub-Adviser'').

7. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement; [8] and (b) the Subadvised Series will make the Multi-Manager Information Statement available on the Web site identified in the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-Manager Information Statement. Applicants state that the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require the Applicants to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of its net assets) (a) the aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers, and (b) the aggregate fees paid to Non-Affiliated Sub-Advisers (collectively, the ''Aggregate Fee Disclosure''). Any Subadvised Series that employs an Excluded Sub-Adviser will provide separate disclosure of any fees paid to such Excluded Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to review and approval of the applicable Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the applicable Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment

[8] A ''Multi-Manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Subadvised Series.

A ''Multi-Manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure, as defined below. Multi-Manager Information Statements will be filed with the Commission via the EDGAR system.

companies. Applicants assert that the requested disclosure relief would enhance the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

8. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants agree to the condition that states that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, Applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that the conditions are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with ''affiliated persons'' of the Adviser, including, but not limited to, Wholly-Owned Sub-Advisers. Applicants state that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions [9]:

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act (or, in the case of an insurance-related Subadvised Series, pursuant to the voting instructions provided by contract owners with assets allocated to any registered separate account for which the Subadvised Series serves as a funding medium), or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the applicable Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the applicable Board, the Adviser will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the applicable Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Series will not make any Ineligible Sub-Adviser Changes without the approval of the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of each Board will be Independent Board Members, and the nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the applicable Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the applicable Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a Sub-Adviser change is proposed for a Subadvised Series with an Excluded Sub-Adviser or a Wholly-Owned Sub-Adviser, the applicable Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders and does not involve a conflict of interest from which the Adviser, Excluded Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Board member or officer of a Subadvised Series or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity, except a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

13. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

14. Any new Sub-Advisory Agreement or any amendment to a Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory rate payable by the Series will be submitted to the Series' shareholders for approval.

[9] Applicants will comply with conditions 8, 9 and 13 if they rely on the relief that would allow them to provide the Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19338 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72811; File No. SR–NASDAQ–2014–079]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7051 Fees Relating to Pricing for Direct Circuit Connections

August 11, 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 August 1, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to modify NASDAQ Rule 7051 to establish direct connectivity and installation fees for a 1Gb Ultra connection option.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend NASDAQ Rule 7051 entitled ''Direct Connectivity to Nasdaq'' to clarify the Exchange's direct connectivity services. Currently, the Exchange offers two direct connectivity options for customers who are not co-located at the Exchange's datacenter, a 10Gb circuit connection and a 1Gb circuit connection.[3] Separate installation and ongoing monthly fees apply to each option. For 1Gb connectivity, the Exchange assesses an installation fee of $1,000 and ongoing monthly fees of $1,000. For 10Gb connectivity, the Exchange charges an installation fee of $1,000 and ongoing monthly fees of $5,000.

In order to keep pace with changes in technology, the Exchange now proposes to provide a 1Gb ''Ultra'' fiber connection offering, which uses new lower latency switches.[4] A switch is a type of network hardware that acts as the ''gatekeeper'' for all clients' orders sent to the system (''System'')[5] at the NASDAQ facility and orders them in sequence for entry into the System for execution. Each of NASDAQ's current connection offerings use different switches, but the switches are of uniform type within each offering (*i.e.,* all 1G connectivity options currently use the same switches). As a consequence, all client subscribers to a particular connectivity option receive the same latency in terms of the capabilities of their switches.

The 1Gb Ultra offering will use a low latency switch, which provides faster processing of orders sent to it in comparison to the current 1G switch in use for Exchange connectivity. As a consequence, direct connect clients needing only 1Gb of bandwidth, but that seek faster processing of those orders as they enter NASDAQ's exchange facility now have the option to subscribe to a faster and more efficient connection to the Exchange.

The Exchange proposes an ongoing monthly subscription fee of $1,500 for a 1Gb Ultra connection plus a one-time installation fee of $1,500. NASDAQ believes that the pricing reflects the hardware and other infrastructure and maintenance costs to NASDAQ associated with offering technology that is at the forefront of the industry. The $1,500 installation fee for the 1Gb Ultra product exceeds the $1,000 installation fee for the existing 1Gb product due to the added complexity of installing the Ultra product. In order to achieve lower latency, the Ultra product requires not only the installation of a fiber telecommunications line but it also requires the additional installation of sophisticated switching equipment.

The new low latency service will be completely optional. Potential customers will make a determination based on whether they perceive a sufficient value in adopting the new service. This new low latency service decreases the time individual orders are processed and market data is transmitted by these new switches. The Exchange's proposal provides the client the option for faster switch processing, which is highly valued among some market participants. NASDAQ notes that other markets have adopted low-latency connectivity options for their users. For example, the International Securities Exchange LLC (''ISE'') offers a 10Gb low latency Ethernet connectivity option to its users, which provides a ''higher speed network to access [ISE's] Optimise trading system.''[6]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposal is consistent with Section 6(b)(4) of the Act in that it is an equitable allocation of fees and is consistent with Section 6(b)(5) of the Act because the proposal is not unfairly discriminatory because it offers a completely optional new direct connectivity choice to customers who are not co-located at the Exchange's datacenter and all client subscribers that opt for this particular connectivity

[3] *See* Securities Exchange Act Release No. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR–NASDAQ–2010–077).

[4] The term ''latency'' for the purposes of this rule filing means a measure of the time it takes for an order to enter into a switch and then exit for entry into the System.

[5] As defined in NASDAQ Rule 4751(a).

[6] *See* Securities Exchange Act Release No. 66525 (March 7, 2012), 77 FR 14847 (March 13, 2012) (SR–ISE–2012–09).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4) and (5).

option and associated fee will receive the same latency in terms of the capabilities of their switches. Also, the proposal is consistent with an equitable allocation of fees and is not unfairly discriminatory because the Exchange operates in a highly competitive market in which exchanges offer various connectivity services as a means to facilitate the trading activities of customers. Accordingly, fees charged for direct connectivity services are constrained by the fees charged for the various alternative connectivity options, including co-location, direct connectivity, and connecting via a third party vendor (extranet or ISV), as well as fees charged by other exchanges, taking into consideration the different costs associated with these service types. It should be noted, however, that the costs associated with direct connect clients are primarily fixed costs that include the costs of installing and maintaining the network and direct connections (including the switch and cabling). Accordingly, the Exchange establishes a range of direct connect fees with the goal of covering these same fixed costs and covering marginal costs, such as the cost of electricity and data center space for the equipment, labor costs associated with the installation and of the equipment and cabling, as well as for entitling the clients to the various services and feeds carried by these connections. The proposed optional new low latency direct connectivity choice simply provides one more way in which a customer can choose to connect.

If a particular exchange charges excessive fees for direct connectivity services, affected members will opt to terminate their direct connectivity arrangements with that exchange, and pursue a range of alternative trading strategies not dependent upon the exchange's direct connectivity services. Accordingly, the exchange charging excessive fees would stand to lose not only direct connectivity revenues and any other revenues associated with the customer's operations. Moreover, all of the Exchange's fees for these services are equitably allocated consistent with Section 6(b)(4) of the Act and consistent with Section 6(b)(5) of the Act are non-discriminatory in that all direct connect clients are offered the same service and there is no differentiation among them with regard to the fees charged for such services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[9] As discussed above, the Exchange believes that the proposed fees for direct connectivity services are comparable to the fees charged for the same service provided to co-locations customers. Additionally, such costs are constrained by the robust competition for order flow among exchanges and non-exchange markets, because direct connectivity exists to advance that competition, and excessive fees for direct connectivity services would serve to impair an exchange's ability to compete for order flow rather than burdening competition. Therefore, the Exchange believes that the proposed rule change enhances, rather than burdens, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–079. 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 NW., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–079, and should be submitted on or before September 5, 2014.

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19337 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72809; File No. SR–NASDAQ–2014–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of the Shares of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF of Arrow Investments Trust

August 11, 2014.

I. Introduction

On June 23, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF (each a ''Fund'' and, collectively, ''Funds'') under Nasdaq Rule 5735. On June 26, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 3, 2014.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment restrictions.[5]

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735 (''Managed Fund Shares''), which governs the listing and trading of Managed Fund Shares. Each Fund is a series of the Arrow Investments Trust (''Trust'').[6] Arrow Investment Advisors, LLC is the investment adviser (''Adviser'') to the Funds.[7] Gemini Fund Services, LLC will act as the administrator and transfer agent to the Funds. Brown Brothers Harriman & Co. (''Custodian'') will act as the custodian and transfer agent to the Funds. Northern Lights Distributors, LLC is the principal underwriter and distributor of each Fund's Shares.

Arrow DWA Balanced ETF

The Exchange represents that the Fund's primary investment objective is to seek to achieve an appropriate balance between long-term capital appreciation and capital preservation. In pursuing its investment objective, the Fund will invest in other ETFs[8] that each invests primarily in domestic and foreign (including emerging markets) (i) equity securities[9] of any market capitalization, (ii) fixed income securities[10] of any credit quality, or (iii) alternative assets.[11] In addition, the Fund will invest in commodity futures through a wholly-owned and controlled Cayman subsidiary (''Balanced Subsidiary''). The Fund's fixed income securities may be rated below investment grade (rated BB+ or lower by Standard & Poor's Ratings Services (''S&P'') or comparably rated by another nationally recognized statistical rating organization (''NRSRO''), also known as ''high yield'' or ''junk'' bonds, and in unrated debt securities determined by the Adviser to be of comparable quality.

The Exchange states that the Fund is a ''fund of funds,'' which means that it primarily invests in ETFs; however, the Adviser may elect to invest directly in the types of securities described above. The Adviser may elect to make these direct investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs in which it invests, allowing the Fund to avoid the costs associated with indirect investments). The Adviser uses technical analysis[12] to allocate the Fund's portfolio among the asset classes described above.

The Exchange states that under normal market conditions,[13] the Fund will invest:

- From 25% to 65% in ETFs that invest in equity securities;
- from 25% to 65% in ETFs that invest in fixed income securities; and
- from 10% to 40% in ETFs that invest in alternative assets.

The Fund will have the ability to invest up to 25% of its total assets in the Balanced Subsidiary. The Balanced Subsidiary will invest primarily in commodity futures, as well as fixed income securities and cash equivalents, which are intended to serve as margin

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that the Arrow Investments Trust will issue and sell shares of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF only in aggregations of 100,000 shares.

[4] *See* Securities Exchange Act Release No. 72493 (June 27, 2014), 79 FR 38088 (''Notice'').

[5] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* note 4 and *infra* note 6, respectively.

[6] *See* Post-Effective Amendment No. 7 to Registration Statement on Form N–1A for the Trust (File Nos. 333–178164 and 811–22638) (''Registration Statement'').

[7] The Exchange states that the Adviser is not a broker-dealer, but it is affiliated with a broker-dealer. The Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio. The Exchange further states that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[8] The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in Nasdaq Rule 5705(a) and (b)) and Managed Fund Shares (as described in Nasdaq Rule 5735).

[9] The Fund defines ''equity securities'' to be exchange-traded common and preferred stocks.

[10] The Fund defines ''fixed income securities'' to be bonds, notes or debentures.

[11] The Fund defines ''alternative assets'' to be investments that are historically uncorrelated to either equity or fixed income investments, which are commodity futures, exchange-traded master limited partnerships (''MLPs'') and real estate-related securities, which include foreign and domestic exchange-traded real estate investment trusts (''REITs'') or exchange-traded real estate operating companies (''REOCs'').

[12] Technical analysis is the method of evaluating securities by analyzing statistics generated by market activity, such as past prices and trading volume, in an effort to determine probable future prices.

[13] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective.

or collateral for the Balanced Subsidiary's investments in commodity futures.

The Fund will invest in ETFs within specific asset classes when the technical models used by the Adviser indicate a high probability that the applicable asset classes and ETFs are likely to outperform the applicable universe. The Fund will sell interests or reduce investment exposure among an asset class or ETF when the technical models used by the Adviser indicate that such asset class or ETF is likely to underperform the applicable universe. The Fund may be more heavily invested in fixed-income ETFs, cash positions and similar securities when the technical models indicate these assets should significantly outperform the equity and/or alternative asset classes.

The Exchange states that, in general, the Fund's investments in equity securities are intended to achieve the capital appreciation component of its investment objective and the Fund's investments in fixed income securities are intended to achieve the capital preservation component of its investment objective. Under normal market conditions, the Adviser expects that the Fund will invest a combined minimum of 35% in fixed-income securities and in alternative assets. The Fund's investments in alternative assets are intended to enable the portfolio to be less reliant on fixed-income investments for reducing volatility and equities for increasing returns. The Adviser may engage in frequent buying and selling of portfolio securities to achieve the Fund's investment objective.

The Exchange states that the Fund seeks to achieve its investment objective by implementing a proprietary technical asset allocation (''TAA'') model. The Adviser will overweight asset classes, rotation strategies, and underlying ETFs exhibiting positive relative strength, and underweight asset classes, rotation strategies, and underlying ETFs exhibiting negative relative strength. In essence, TAA works by reallocating at different times in response to the changing patterns of returns available in the markets. This methodology does not attempt to predict the future; it simply reacts to pattern changes in the marketplace at any given time. This methodology allows the Fund to be adaptive to current market conditions. The tactical model relies on a number of technical indicators when making allocation decisions for the Fund. The Adviser utilizes relative strength as the primary technical indicator to tactically allocate assets both within and across asset classes and rotation strategies. The relative strength indicator is important because it adapts to the changing market conditions. Relative strength measures the likelihood that an ETF or a group of ETFs will outperform the appropriate base index. When the indicator is moving up, it shows that the ETF or group of ETFs is performing better than the base index. When the indicator is moving down, it shows that the ETF or group of ETFs is performing worse than the base index (*i.e.,* not rising as fast or falling faster).[14]

The Exchange states that the Adviser has discretion to add to or delete from the universe of eligible ETFs for each strategy based on holdings, expense ratio, volume, liquidity, new product availability, and other factors that can positively contribute to achieving the Fund's investment objectives.

Arrow DWA Tactical ETF

The Exchange states that the Fund's primary investment objective is to seek to achieve long-term capital appreciation with capital preservation as a secondary objective. In pursuing its investment objective, the Fund will invest in other ETFs[15] that each invests primarily in domestic and foreign (including emerging markets) (i) equity securities[16] of any market capitalization, (ii) fixed-income securities[17] of any credit quality, or (iii) alternative assets.[18] In addition, the Fund will invest in commodity futures through a wholly-owned and controlled Cayman subsidiary (''Tactical Subsidiary''). The Fund's fixed income securities may be rated below investment grade (rated BB+ or lower by S&P or comparably rated by another NRSRO, also known as ''high yield'' or ''junk'' bonds, and in unrated debt securities determined by the Adviser to be of comparable quality.

The Exchange represents that the Fund is a ''fund of funds,'' which means that it primarily invests in ETFs; however, the Adviser may elect to invest directly in the types of securities described above. The Adviser may elect to make these direct investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs in which it invests, allowing the Fund to avoid the costs associated with indirect investments). The Adviser uses technical analysis to allocate the Fund's assets among the asset classes described above.[19]

The Exchange states that under normal market conditions, the Fund will invest:

- From 0% to 100% of its assets in ETFs that invest in equity securities;
- From 0% to 100% of its assets in ETFs that invest in fixed-income securities; and
- From 0% up to 90% of its assets in ETFs that invest in alternative assets.

The Exchange states that the Fund will have the ability to invest up to 25% of its total assets in the Tactical Subsidiary. The Tactical Subsidiary will invest primarily in commodity futures, as well as fixed-income securities and cash equivalents, which are intended to serve as margin or collateral for the Tactical Subsidiary's investments in commodity futures.

The Exchange states that the Fund will invest in ETFs within specific asset classes when the technical models used by the Adviser indicate a high probability that the applicable asset classes and ETFs are likely to outperform the applicable universe. The Fund will sell interests or reduce investment exposure among an asset class or ETF when the technical models used by the Adviser indicate that such asset class or ETF is likely to underperform the applicable universe. The Fund may invest more heavily in fixed-income ETFs, cash positions and similar securities when the technical models indicate these assets should significantly outperform the equity and/or alternative asset classes.

The Exchange states that, in general, the Fund's investments in equity securities are intended to achieve the capital appreciation component of the Fund's investment objectives. At times, the Fund may invest in fixed-income securities in order to achieve the capital preservation component of the Fund's investment objectives. The Fund's investments in alternative assets are intended to enable the portfolio to be less reliant on fixed-income investments for reducing volatility and equities for increasing returns. The Adviser may engage in frequent buying and selling of portfolio securities to achieve the Fund's investment objectives.

The Exchange states that the Fund seeks to achieve its investment objectives by implementing a proprietary TAA model. The Adviser will overweight asset classes, rotation

[14] For example, in the sector rotation strategy, the Adviser creates a sector-based index to compare all available sector ETFs for investment in the Fund. The performance of each ETF is compared to the base index and ranked. The Adviser generally purchases the ETFs that demonstrate the highest-ranked relative strength and sells any positions that are not included in that list.

[15] *See supra* note 8.

[16] *See supra* note 9.

[17] *See supra* note 10.

[18] *See supra* note 11.

[19] *See supra* note 12.

strategies and underlying ETFs exhibiting positive relative strength and underweight asset classes, rotation strategies and underlying ETFs exhibiting negative relative strength. The tactical model relies on a number of technical indicators when making allocation decisions for the Fund. The Adviser utilizes relative strength as the primary technical indicator to tactically allocate assets both within and across asset classes and rotation strategies. The relative strength indicator is important because it adapts to the changing market conditions. Relative strength measures the likelihood that an ETF or a group of ETFs will outperform the appropriate base index. When the indicator is moving up, it shows that the ETF or group of ETFs is performing better than the base index. When the indicator is moving down, it shows that the ETF or group of ETFs is performing worse than the base index (*i.e.,* not rising as fast or falling faster).[20]

The Exchange states that the Adviser has discretion to add to or subtract from the universe of eligible ETFs for each strategy based on holdings, expense ratio, volume, liquidity, new product availability and other factors that can positively contribute to achieving the Fund's investment objectives.

The Subsidiaries

The Exchange represents that the Balanced Fund and Tactical Fund each has the ability to invest up to 25% of its total assets in the Balanced Subsidiary and the Tactical Subsidiary, respectively (each a ''Subsidiary''; together, ''Subsidiaries''). Each Subsidiary will invest primarily in commodity futures, as well as fixed-income securities and cash equivalents, which are intended to serve as margin or collateral for each Subsidiary's investments in commodity futures. Each Subsidiary may have both long and short positions in commodities futures. However, for a given commodity, each Subsidiary will have a net long exposure. Each Subsidiary will also be advised by the Adviser.[21]

By investing in commodities futures indirectly through the applicable Subsidiary, the Exchange states that each of the Balanced Fund and the Tactical Fund will obtain exposure to the commodities markets within the federal tax requirements that apply to the Fund. Investment in each Subsidiary is expected to provide the applicable Fund with exposure to the commodities markets within the limitations of the federal tax requirements of Subchapter M of the Internal Revenue Code.

Because each of the Balanced Fund and the Tactical Fund may invest up to 25% of its assets in its respective Subsidiary, each Fund may be considered to be investing indirectly in such investments through its Subsidiary, and references to each of the Balanced Fund and Tactical Fund may also include its Subsidiary. When viewed on a consolidated basis, each Subsidiary will be subject to the same investment restrictions and limitations, and follow the same compliance policies and procedures, as the applicable Fund.

The Exchange represents that as a result of the instruments that will be indirectly held by each of the Balanced Fund and the Tactical Fund, the Adviser has registered as a commodity pool operator[22] and is also a member of the National Futures Association (''NFA''). Each of the Balanced Fund, Tactical Fund, and the Subsidiaries are subject to regulation by the Commodity Futures Trading Commission and NFA, and to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

Arrow DWA Tactical Yield ETF

The Exchange states that the Fund's primary investment objective is to seek high current income with an appropriate balance between long-term capital appreciation and capital preservation. In pursuing its investment objective, the Fund will invest in other ETFs[23] that each invest in domestic and foreign (including emerging markets) (i) equity securities[24] of any market capitalization or (ii) fixed-income securities[25] of any credit quality. The Fund also invests indirectly in these asset classes through various exchange-traded products (''ETPs'')[26] and exchange-traded closed-end funds, and directly through individual securities. In order to mitigate the settlement risk of the foreign denominated securities in which it invests due to currency fluctuations, the Fund may also invest up to 25% of its net assets in Spot Forex futures.

The Exchange states that the Fund will maintain two income strategies that focus on (i) securities that generate ''high beta yield,'' consisting of securities correlated to equities based on a proprietary methodology, and (ii) securities that generate ''low beta yield,'' consisting of securities less correlated to equities based on a proprietary methodology. Beta is a measure of the price volatility, or risk, of a security or a portfolio in comparison to the market as a whole. A security's correlation to equities is a measure of the performance similarity of the security to the S&P 500 index. The high beta strategy is a composite of securities that are selected based on their credit and equity risk premiums characteristics. The low beta yield strategy is a composite of securities that are selected based on their inflation, interest, and credit risk characteristics. The Fund uses a proprietary selection methodology designed to identify securities that demonstrate strong relative strength characteristics within each strategy. The Fund will then utilize a quantitative methodology that relies on economic and fundamental factors to tactically underweight and overweight the income strategies.

The Exchange represents that the Fund will, under normal market conditions, invest as follows:

- From 20% to 80% in the Low Beta (LB). The LB will be comprised of equity and fixed income securities, including ETPs that invest in international and domestic securities; and
- From 20% to 80% in the High Beta (HB). The HB will be in equity and fixed income securities, including ETPs that invest in international and domestic securities.

The Exchange states that the Fund expects to be a ''fund of funds,'' which means that it primarily invests in ETFs, ETPs, and closed-end funds; however, the Adviser may elect to invest directly in the asset classes described above. The Adviser may elect to make these direct

[20] *See supra* note 14.

[21] Neither Subsidiary will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') nor will be directly subject to its investor protections, except as noted in the Registration Statement. However, each Subsidiary will be wholly-owned and controlled by the applicable Fund and will be advised by the Adviser. Therefore, each Fund's ownership and control of its respective Subsidiary will prevent the applicable Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board of Trustees of the Trust (''Board'') will have oversight responsibility for the investment activities of each Fund, including its expected investment in the applicable Subsidiary, and the Fund's role as the sole shareholder of the applicable Subsidiary. The Adviser will receive no additional compensation for managing the assets of each Subsidiary. Each Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same, or with affiliates of the same, service providers that provide those services to the Funds.

[22] As defined in Section 1a(11) of the Commodity Exchange Act.

[23] *See supra* note 8.

[24] The Fund defines equity securities to be exchange-traded common and preferred stocks and exchange-traded REITs.

[25] *See supra* note 10.

[26] The ETPs in which the Fund may invest include exchange-traded currency trusts (as described in Nasdaq Rule 5711(e)) and exchange-traded notes (''ETNs'') (as described in Nasdaq Rule 5730).

investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs, ETPs, or closed-end Funds in which it invests, allowing the Fund to avoid the costs associated with indirect investments).

All Funds

The Exchange represents that in certain situations or market conditions, a Fund may temporarily depart from its normal investment policies and strategies, provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress. The Funds may borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Funds, but only for temporary or emergency purposes. The use of temporary investments is not a part of a principal investment strategy of the Funds.

The Exchange represents that each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Exchange represents that each Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.

The Exchange states that the Funds will be classified as ''non-diversified'' investment companies under the 1940 Act, and that the Funds intend to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

The Funds will not invest in options or swaps.

The Exchange represents that each Fund's investments and each Subsidiary's investments will be consistent with its (or its applicable Fund's) respective investment objective and, although certain derivative investments will have a leveraging effect on the Funds and Subsidiaries, the Funds and Subsidiaries will not seek leveraged returns (*e.g.,* 2X or −3X).

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[28] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[29] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. In addition, the Intraday Indicative Value,[30] as defined in Nasdaq Rule 5735(c)(3), of each Fund will be available on the NASDAQ OMX Information LLC proprietary index data service, and will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[31] On each business day, before commencement of trading in Shares in the Regular Market Session[32] on the Exchange, the Funds will disclose on their Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by each Fund that will form the basis for each Fund's calculation of NAV at the end of the business day.[33] The Custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments, as well as amount of cash (if any), constituting the creation basket for each Fund for that day. The NAV of each Fund will be determined once each business day, normally as of the close of trading of the New York Stock Exchange, generally, 4:00 p.m. Eastern Time.[34] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intraday, executable price quotations on the securities and other assets held by the Funds and Subsidiaries will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intraday price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[30] According to the Exchange, the Intraday Indicative Value reflects an estimated intraday value of each Fund's portfolio. The Intraday Indicative Value will be based upon the current value for the components of a Disclosed Portfolio.

[31] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[32] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

[33] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by each Fund and each Subsidiary and the characteristics of such assets. The Web site and information will be publicly available at no charge.

[34] NAV will be calculated by deducting all of a Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent.

investors. Pricing information for exchange-traded securities such as common and preferred stocks, ETFs, ETPs, ETNs, closed-end funds, futures contracts, REITs, MLPs, and REOCs will be publicly available from the Web sites of the exchanges on which they trade, on public financial Web sites, and through subscription services such as Bloomberg and Thompson Reuters. Pricing information regarding debt securities (including high yield fixed-income securities, bonds, notes, and debentures) will be available through subscription services such as Markit, Bloomberg, and Thompson Reuters. The Funds' Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[35] and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in Shares of the Funds may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[36] In addition, the Exchange states that the Adviser is not a broker-dealer, but it is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.[37] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[38] The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares and other exchange-traded securities and instruments held by the Funds with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA may obtain trading information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. national securities and certain futures exchanges, or are parties to a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by each Fund reported to FINRA's Trade Reporting and Compliance Engine. Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) At all times, 90% of each Fund's exchange-traded assets will be securities that trade in markets that are members of the ISG, which includes all U.S. national securities and certain futures exchanges, or are parties to a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to

[35] These reasons may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolios of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.

[36] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[37] *See supra* note 7. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[38] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[39]

(7) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets.

(8) The Funds will not invest in options or swaps.

(9) Each Fund's investments and each Subsidiary's investments will be consistent with its (or its applicable Fund's) respective investment objective and, although certain derivative investments will have a leveraging effect on the Funds and Subsidiaries, the Funds and Subsidiaries will not seek leveraged returns (*e.g.,* 2X or −3X).

(10) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[40] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NASDAQ–2014–063), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19335 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

[39] *See* 17 CFR 240.10A–3.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72806; File No. SR–Phlx–2014–51]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

August 11, 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 August 1, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Section III of the Pricing Schedule which pertains to Singly Listed Options fees.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Section III of the Exchange's Pricing Schedule entitled ''Singly Listed Options'' to: (1) Amend Options Transaction Charges; (ii) delete NASDAQ OMX Alpha Indexes(™) (''Alpha Indexes''),[4] MSCI Index Options,[5] and Treasury Securities[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Singly Listed Options fees includes options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

[4] Alpha Indexes measure relative total returns of one stock and one exchange-traded fund share (''ETF'') underlying options which are also traded on the Exchange (each such combination of two components is referred to as an ''Alpha Pair''). The first component identified in an Alpha Pair (the ''Target Component'') is measured against the second component identified in the Alpha Pair (the ''Benchmark Component''). Alpha Index Options contracts will be exercised European-style and settled in U.S. dollars. *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2001) (SR–Phlx–2010–176).

[5] The Exchange filed to list options on the MSCI EM Index. The MSCI EM Index is a free float-adjusted market capitalization index consisting of large and midcap component securities from countries classified by MSCI as ''emerging markets,'' and is designed to measure equity market performance of emerging markets. The index consists of component securities from the following 21 emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. *See* Securities Exchange Act Release No. 66420 (February 17, 2012), 77 FR 11177 (February 24, 2012) (SR–Phlx–2011–179) (an order granting approval of the proposal to list and trade options on the MSCI EM Index). The Exchange also filed to list options on the MSCI EAFE Index. The MSCI EAFE Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. *See* Securities Exchange Act Release No. 66569 (March 9, 2012), 77 FR 15409 (March 15, 2014) (SR–Phlx–2012–28).

[6] Subsection (a)(1) of Phlx Rule 1001D states that the term ''Treasury securities'' (also known as Treasury debt securities) means a bond or note or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest (except debt securities guaranteed as to timely payment of principal and interest by the Government National Mortgage

Continued

pricing; (iii) adopt new pricing for FX Options [7] (currencies); and (iv) make other technical amendments to the Pricing Schedule to clarify text and remove outdated text.

Today, the Exchange assesses an Options Transaction Charge for Customers of $0.40 per contract, for Professionals,[8] Firms [9] and Broker-Dealers [10] of $0.60 per contract and for Specialists [11] and Market Makers [12] of $0.40 per contract. These fees apply to options overlying currencies,[13] equities, exchange-traded notes (''ETNs''),[14] exchange-traded fund (''ETF'') [15] and indexes.[16] Today, these fees do not apply to Alpha Index Options, MSCI Index Options or Treasury Securities, which have separate pricing listed in Section III of the Pricing Schedule. The Exchange proposes to increase the Professional, Broker-Dealer and Firm Options Transaction Charges from $0.60 to $0.70 per contract for Singly Listed Options. The increase aligns these fees with electronic Non-Penny Pilot fees in Section II of the Pricing Schedule.[17] Despite the fee increase, the proposal will allow the Exchange to incentivize market participants to transact Singly Listed Options.

The Exchange proposes to delete pricing related to Alpha Indexes, MSCI Index Options and Treasury Securities because the Exchange no longer lists options on Alpha Indexes, MSCI Index Options or Treasury Securities. The separate pricing related to these products is not relevant to any product currently listed on Phlx. The Exchange proposes to remove the words ''treasury securities'' from the title of Section III.

The Exchange proposes to adopt new pricing for FX Options (currently referred to as currencies in the Pricing Schedule in Section III and including XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV). Today, as noted above, the Exchange assesses an Options Transaction Charge for Customer of $0.40 per contract, for Professional, Firm and Broker-Dealer of $0.60 per contract and for Specialist and Market Maker of $0.40 per contract and these fees apply to options overlying FX Options. The Exchange is proposing to adopt new pricing for FX Options to incentivize market participants to transact a greater number of FX Options. The Exchange also proposes to refer to ''currencies'' as ''FX Options'' in the Pricing Schedule.

Specifically, the Exchange proposes to pay the following Rebates for Adding Liquidity and assess the following per contract Fees for Removing Liquidity in Singly Listed FX Options for Simple Orders:

	Customer	Specialist	Market maker	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity	$0.00	$0.20	$0.20	$0.00	$0.00	$0.00
Fee for Removing Liquidity	0.40	0.40	0.40	0.40	0.40	0.40

The Exchange would add the above pricing to Section III as Part A. The Exchange also proposes to assess the following per contract Fees for Adding and Removing Liquidity in Singly Listed FX Options for Complex Orders:[18]

	Customer	Specialist	Market maker	Firm	Broker-Dealer	Professional
Fee for Adding Liquidity	$0.40	$0.40	$0.40	$0.40	$0.40	$0.40
Fee for Removing Liquidity	0.40	0.40	0.40	0.40	0.40	0.40

Simple Singly Listed FX Options Orders that are executed against the individual components of Complex Singly Listed FX Options Orders will be assessed the fees and paid the rebates in Part A. However, the individual components of Complex Singly Listed FX Options Orders will be assessed the fees in Part B. Transactions in Singly Listed FX Options originating on the Exchange floor will be subject to the Fee for Removing Liquidity. However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the Fees for Removing Liquidity will apply to the transactions which originated on

Association). Securities issued or guaranteed by individual departments or agencies of the United States are sometimes referred to by the title of the department or agency involved (e.g., a ''Treasury security'' is a debt instrument that is issued by the United States Treasury).

[7] For purposes of pricing of Singly Listed FX Options, this includes the following U.S. dollar-settled foreign currency options: XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV.

[8] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[9] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[11] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[12] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)).

[13] U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV.

[14] ETNs are also known as ''Index-Linked Securities,'' which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

[15] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

[16] The following index symbols will be assessed the Options Transaction Charges in Section III for Singly Listed Options: SOX, HGX and OSX.

[17] Professionals, Broker-Dealers and Firms are assessed a $0.70 per contract electronic Options Transaction Charge in Multiply Listed Options.

[18] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

the Exchange floor and the contracts that are executed electronically will be subject to the rebates and fees, as applicable, for Simple and Complex Orders. The fees for FX Options executions in all electronic auctions including, but not limited to, the Quote Exhaust auction,[19] the opening process and Complex electronic auction, including the Complex Order Live Auction (''COLA''),[20] will be $0.40 per contract for Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker. PIXL [21] Executions in FX Options will be as follows: Initiating Order: [22] $0.20 per contract and all other participants: $0.40 per contract. The Exchange believes the proposed competitive pricing will incentivize market participants to transact Singly Listed FX Options orders on Phlx.

Finally, the Exchange proposes to remove certain notes in the Pricing Schedule. The Exchange proposes to remove the note applying to Treasury Securities, ''The Options Transaction Charges and Rebates for Treasury Securities will be effective as of March 1, 2013,'' because this note is outdated. The Exchange also proposes to delete the note 11 in the Pricing Schedule that was applicable to MSCI Index Options and states, ''Non-Customer executions in MSCI Index Options will be assessed a surcharge of $0.05 per contract,'' because the Exchange no longer lists MSCI Index Options. The Exchange proposes to delete note 12 in the Pricing Schedule, ''Options Transaction Charge—Floor will apply to the first 500 contract only. Each additional contract will be assessed an options transaction charge—floor of $0.00.'' Note 12 is associated with Treasury Securities, which are not currently listed on Phlx.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [23] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Singly Listed Options Transaction Charge

The Exchange believes that increasing the Professional, Firm and Broker-Dealer Options Transaction Charges is reasonable because the Exchange is seeking to conform fees to electronic Non-Penny Pilot Options [25] pricing for Multiply Listed Options [26] in order to recoup the operational costs [27] for Singly Listed Options. Also, the Exchange believes the fees are reasonable because the proposed fees are within the range of similar fees assessed at other exchanges.[28]

The Exchange believes that increasing the Professional, Firm and Broker-Dealer Options Transaction Charges is equitable and not unfairly discriminatory because the pricing will be comparable among similar categories of market participants, as is the case today. Professionals, Firms and Broker-Dealers will be assessed the same rates ($0.70 per contract) and Customers, Specialists and Market Makers will continue to be assessed lower rates as compared to other market participants. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in Singly Listed Options benefits all market participants through increased liquidity. The Exchange notes that Specialists and Market Makers are assessed lower options transaction charges as compared to other market participants, except Customers, because they have burdensome quoting obligations[29] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

Alpha Indexes, MSCI Index Options and Treasury Securities

The Exchange's proposal to delete pricing related to Alpha Indexes, MSCI Index Options and Treasury Securities is reasonable because the Exchange no longer lists options on Alpha Indexes, MSCI Index Options or Treasury Securities. The Exchange's proposal to delete pricing related to Alpha Indexes, MSCI Index Options and Treasury Securities is equitable and not unfairly discriminatory because the pricing will not apply to any market participant.

FX Options

The Exchange's proposal to adopt new pricing for Singly Listed FX Options is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.[30]

The Exchange's proposed new Simple and Complex Order pricing in Singly Listed FX Options is reasonable because the Exchange desires to incentivize market participants to transact a greater number of Singly Listed FX Options on Phlx. The Exchange is offering pricing specific to Singly Listed FX Options because the Exchange believes that incentivizing Specialists and Market Makers to add increased liquidity in Singly Listed FX Options by offering Simple Order rebates to these participants will benefit all market participants through tighter markets and

[19] A Quote Exhaust occurs when the market at a particular price level on the Exchange includes a quote, and such market is exhausted by an inbound contra-side quote or order (''initiating quote or order''), and following such exhaustion, contracts remain to be executed from the initiating quote or order. *See* Exchange Rule 1082(a)(ii)(B)(3).

[20] The Complex Order Live Auction (''COLA'') is the auction for eligible Complex Orders. *See* Phlx Rule 1080, Commentary .08.

[21] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Phlx Rule 1080(n).

[22] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4), (5).

[25] All Singly Listed Options are Non-Penny Pilot Options.

[26] *See* Section II of the Pricing Schedule.

[27] By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a Singly Listed Option, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

[28] The Chicago Board Options Exchange, Incorporated (''CBOE'') assesses an $0.80 per contract fee to Customers, Broker-Dealers, Non-Trading Permit Holder Market Makers and Professional, Voluntary Professional and Joint Back-Office market participants for SPX Range Options (SRO) transactions, a proprietary index, in addition to a surcharge fee. SPX refers to options on the Standard & Poor's 500 Index. *See* CBOE's Fees Schedule. In addition, NASDAQ Options Market LLC (''NOM'') assesses Non-Penny Pilot Fees for Removing Liquidity ranging from $0.85 to $0.89 per contract depending on the market participant. *See* Chapter XV, Section 2 of NOM's Rules. The Exchange also assesses a Professional, Broker-Dealer and Firm an electronic options transaction charge (Non-Penny Pilot Options) of $0.70 per contract for transactions in Multiply Listed Options. *See* Section II of the Exchange's Pricing Schedule.

[29] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[30] *See* CBOE's Fees Schedule and the International Securities Exchange LLC's Fee Schedule.

order interaction. Also, providing Specialists and Market Makers an opportunity to earn a rebate will incentivize Specialists and Market Makers to interact with a greater number of Simple Orders in Singly Listed FX Options on the Exchange. The Exchange believes it is reasonable to assess lower fees to transact Singly Listed FX Options, as compared to other Singly Listed products, because the Exchange seeks to incentivize these market participants to transact a greater number of FX Options.

With respect to Simple Orders, the Exchange would only pay a Rebate for Adding Liquidity to Specialists and Marker Makers to encourage order interaction in Singly Listed FX Options. All market participants would be assessed a $0.40 per contract Fee for Removing Liquidity in Singly Listed FX Options. The Exchange believes that the Simple Order Singly Listed FX Options Fees are equitable and not unfairly discriminatory because all market participants would be assessed the same Fees for Removing Liquidity. Also, offering only Specialists and Market Makers a Rebate for Adding Liquidity when transacting FX Options is equitable and not unreasonably discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, [31] which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. With respect to Complex Orders, the Exchange would assess all market participants a $0.40 per contract Fee for Adding and Removing Liquidity in Singly Listed FX Options. The Exchange believes that the Complex Order Singly Listed FX Options Fees are equitable and not unfairly discriminatory because all market participants would be assessed the same Fees for Adding and Removing Liquidity.

The Exchange's proposal to assess the fees and pay the rebates in Part A for Simple FX Options Orders that are executed against the individual components of Complex FX Options Orders and assess the fees in Part B to the individual components of Complex FX Options Orders is reasonable, equitable and not unfairly discriminatory because the Exchange is seeking to assess fees and pay rebates for Singly Listed Options in a manner comparable to the current Pricing Schedule.[32] For example, today, the Exchange assesses fees and pays rebates for Simple and Complex Orders for SPY transactions in a similar manner as proposed herein. Additionally, all market participants would be assessed fees and paid rebates for Singly Listed Options in a uniform manner.

The Exchange's proposal to assess transactions in Singly Listed FX Options originating on the Exchange floor the proposed FX Options Fees for Removing Liquidity in Section III, unless one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the FX Options Fees for Removing Liquidity would apply to transactions which originated on the Exchange floor and electronically executed contracts would be subject to the rebates and fees, as applicable, for Simple and Complex Orders is reasonable, equitable and not unfairly discriminatory for the reasons which follow. The Exchange proposes to assess fees and pay rebates for Singly Listed FX Options in a manner comparable to the current Pricing Schedule.[33] For example, today, the Exchange assesses fees and pays rebates for SPY transactions for transaction originating on the Exchange floor and electronically submitted transactions in a similar manner as proposed herein. The Exchange intends to uniformly apply its fees in the manner described herein to all market participants. The Exchange believes that the addition of this rule text in the Pricing Schedule will add clarity to the manner in which the Exchange will impose fees.

The Exchange's proposal to treat FX Options executions in Singly Listed Options which occur as part of an electronic auction, including, but not limited to, the Quote Exhaust Auction, opening process and Complex electronic auction, including COLA, in the same manner by assessing $0.40 per contract for all market participants is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to assess the same fee [34] for these auctions as other transactions and is proposing to uniformly assess these fees to all market participants.

The Exchange's proposal to assess PIXL pricing for Singly Listed FX Options of $0.20 per contract for the Initiating Order and $0.40 per contract for all market participants for all PIXL transactions is reasonable because the fees should encourage market participants to transact a greater number of PIXL Orders for the purpose of obtaining price improvement with respect to their orders. The $0.40 per contract fee is comparable to the FX Options Fees for Removing Liquidity in Simple and Complex Options. The Exchange's proposal to assess $0.20 per contract for the Initiating Order is discounted by half to encourage market participants to submit Initiating PIXL Orders. The Exchange similarly lowered the fee for the Initiating Order for options in SPY in order to encourage market participants to submit a greater number of Initiating Orders.[35] The Exchange believes that an Initiating Order of $0.20 per contract is reasonable given the $0.40 per contract rate for all other orders in PIXL and the differential between the Initiating Order and all other orders is within the range of differentials existing on the Exchange's Pricing Schedule ($0.05 vs. $0.38 for SPY and $0.05 or $0.07 per contract vs. $0.30 for all other PIXL Orders).[36]

The Exchange's proposal to assess PIXL pricing for Singly Listed FX Options of $0.20 per contract for the Initiating Order and $0.40 per contract for all market participants for all PIXL transactions is equitable and not unfairly discriminatory because the Exchange proposes to assess all market participants transacting Singly Listed FX Options in PIXL these rates. Under the proposal, all market participants would be treated in a uniform manner with respect to FX Options Singly Listed PIXL orders.

The Exchange's proposal to delete various notes from the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the notes are outdated or apply to products no longer listed on Phlx. By removing outdated rule text which is no longer applicable, the Pricing Schedule will be less confusing and refer to only current pricing in Section III.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that increasing the Professional, Firm and Broker-Dealer Options Transaction Charges does not create an undue burden on competition because the Exchange incurs higher

[31] *See* note 29.

[32] *See* Section I of the Pricing Schedule.

[33] *Id.*

[34] The proposed Singly Listed FX Options Fees for Removing Liquidity in Simple and Complex Options is $0.40 per contract.

[35] *See* Section I of the Pricing Schedule.

[36] *See* Section I and Section IV, Part A of the Pricing Schedule.

costs to list Singly Listed Options as compared to Multiply Listed Options and the Exchange proposes to recoup these operational costs by assessing uniform fees for all market participants except Customers, Specialists and Market Makers. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in Singly Listed Options benefits all market participants through increased liquidity. Specialists and Market Makers are assessed lower options transaction charges as compared to other market participants, except Customers, because they have burdensome quoting obligations [37] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange's proposal to delete pricing related to Alpha Indexes, MSCI Index Options and Treasury Securities does not create an undue burden on competition because the Exchange no longer lists options on Alpha Indexes, MSCI Index Options or Treasury Securities and the pricing will not apply to any market participant.

The Exchange's proposal to adopt new pricing for Singly Listed FX Options does not create an undue burden on competition because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products.[38] Further, incentivizing Specialists and Market Makers to add increased liquidity in Singly Listed FX Options by offering Simple Order rebates to these participants will benefit all market participants through tighter markets and order interaction. Also, by providing Specialists and Market Makers an opportunity to earn a rebate will incentivize Specialists and Market Makers to interact with a greater number of Simple Orders in Singly Listed FX Options on the Exchange. The Exchange believes it is reasonable to assess lower fees to transact Singly Listed FX Options, as compared to other Singly Listed products, because the Exchange seeks to incentivize these market participants to transact a greater number of FX Options. Specialists and Market Makers have obligations to the market and regulatory requirements,[39] which normally do not apply to other market participants. With respect to Complex Orders, the Exchange would similarly assess all market participants a $0.40 per contract Fee for Adding and Removing Liquidity in Singly Listed FX Options.

The Exchange's proposal to assess the fees and pay the rebates in Part A for Simple FX Options Orders that are executed against the individual components of Complex FX Options Orders and assess the fees in Part B to the individual components of Complex FX Options Orders is comparable to the manner in which pricing is currently applied today for SPY pricing [40] and does not create an undue burden on competition because the Exchange uniformly applies this treatment to all market participants. Similarly, the Exchange's proposal to assess transactions in Singly Listed FX Options originating on the Exchange floor the proposed FX Options Fees for Removing Liquidity in Section III, unless one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the Fees for Removing Liquidity will apply to the transactions which originated on the Exchange floor and the contracts that are executed electronically will be subject to the rebates and fees, as applicable, for Simple and Complex Orders, does not create an undue burden on competition because this treatment is comparable to the manner in which pricing is currently applied today for SPY pricing [41] and does not create an undue burden on competition because the Exchange uniformly applies this treatment to all market participants. The Exchange's proposal to treat FX Options executions in Singly Listed Options which occur as part of an electronic auction, including, but not limited to, the Quote Exhaust Auction, opening process and Complex electronic auction, including COLA, in the same manner by assessing $0.40 per contract for all market participants does not create an undue burden on competition because the Exchange is proposing to assess the same fee [42] for these auctions as other transactions and is proposing to uniformly assess these fees to all market participants.

The Exchange's proposal to assess PIXL pricing for Singly Listed FX Options of $0.20 per contract for the Initiating Order and $0.40 per contract for all market participants for all PIXL transactions does not create an undue burden on competition because the Exchange proposes to assess all market participants transacting Singly Listed FX Options in PIXL these rates. Under the proposal, all market participants would be treated in a uniform manner with respect to FX Options Singly Listed PIXL orders.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[43] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[37] *See* note 29.

[38] *See* note 30.

[39] *See* note 29.

[40] *See* Section I of the Pricing Schedule.

[41] *Id.*

[42] The proposed Singly Listed FX Options Fees for Removing Liquidity in Simple and Complex Options is $0.40 per contract.

[43] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx-2014–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–51, and should besubmitted on or before September 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19333 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72805; File No. SR–NYSE–2014–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Modify the Tier 2 Adding Credit

August 11, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 28, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to modify the Tier 2 Adding Credit. The proposed credit will be operative on August 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to modify the Tier 2 Adding Credit. The proposed credit will be operative on August 1, 2014.

Under the current Tier 2 Adding Credit,[4] the Exchange provides an equity per share credit per transaction of $0.0020 ($0.0010 if a Non-Displayed Reserve Order or $0.0015 if a Midpoint Passive Liquidity Order) when adding liquidity to the NYSE by one of the following three methods:

(1) The member organization has Customer Electronic Adding ADV [5] that is at least 1.1% of NYSE consolidated ADV (''CADV'') and executes market-on-close (''MOC'') and limit-on-close (''LOC'') orders of at least 0.375% of NYSE CADV;

(2) The member organization has Adding ADV [6] that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit (''SLP-Prop'') and an SLP market maker (''SLMM'') of the same member organization) of more than 0.15% of NYSE CADV; or

(3) The member organization has Customer Electronic Adding ADV during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization's Customer Electronic Adding ADV during September 2012 as a percentage of consolidated average daily volume in NYSE-listed securities during September 2012 plus 15%.

The Exchange proposes to amend the second method so that a member organization will be required either to execute MOC and LOC orders of at least 0.12% of NYSE CADV or alternatively

[4] The credit applies to transactions in stocks with a per share stock price of $1.00 or more.

[5] Customer Electronic Adding ADV is average daily trading volume (''ADV'') that adds liquidity in customer electronic orders to the NYSE, but excludes any liquidity added by a Floor broker, Designated Market Maker (''DMM''), or Supplemental Liquidity Provider (''SLP''). For purposes of transactions fees and SLP credits, ADV calculations exclude early closing days.

[6] Adding ADV adds liquidity to the NYSE during the billing month but excludes any liquidity added by a DMM.

to execute an ADV during the billing month of at least one million shares in Retail Price Improvement Orders (''RPIs'').[7] The other qualifications for the second method (Adding ADV that is at least 0.8% of NYSE CADV and adding liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate of more than 0.15% of NYSE CADV) will remain the same. The Exchange does not propose to change the qualifications for the first or third methods.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that amending the second method of qualifying for the Tier 2 Adding Credit to consider the submission of RPIs is reasonable because it would provide member organizations with an alternative way in which to qualify for the credit, thereby encouraging member organizations to provide higher volumes of RPIs, which will contribute to the quality of the Exchange's market, particularly for retail investors. The one-million-share threshold for RPIs is reasonable because it is the same level set as part of a qualification for a previously offered credit.[10] The Exchange believes that the proposed credit is equitable and not unfairly discriminatory because all member organizations are permitted to submit RPIs. Member organizations that choose not to submit RPIs can continue to qualify for the Tier 2 Adding Credit under the existing methods.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed Tier 2 Adding Credit will not place a burden on competition because the Exchange is establishing an alternative way for member organizations to earn the credit, which would allow more member organizations to compete and qualify for the fee. The proposed change also will create an incentive to submit RPIs to the Exchange, thereby promoting competition for retail orders. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–42 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–NYSE–2014–42. 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–

[7] An RPI consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. For securities to which it is assigned, a Retail Liquidity Provider (''RLP'') may only enter an RPI in its RLP capacity. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and is treated as a non-RLP member organization for those particular securities. Member organizations other than RLPs are permitted, but not required, to submit RPIs. *See* Rule 107C(a)(4).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 71684 (March 11, 2014), 78 FR 14758 (March 17, 2014) (SR–NYSE–2014–09) (establishing a $0.0019 per share credit per transaction for all non-Floor broker transactions that add liquidity to the Exchange if the member organization executes an ADV during the billing month of at least one million shares in RPIs and a Customer Electronic Adding ADV during the billing month of at least five million shares).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

2014–42 and should be submitted on or before September 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19332 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72804; File No. SR–OCC–2014–804]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice To Permit OCC To Adjust the Size of Its Clearing Fund Intra-Month and Clearing Member's Clearing Fund Contributions Intra-Month

August 11, 2014.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) of the Securities Exchange Act of 1934[2] notice is hereby given that on July 22, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I and II below, which Items have been prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with a proposed change that would permit OCC to increase the size of its clearing fund intra-month based upon observed changes in OCC's projected exposure and on an emergency basis. In addition, the proposed change provide [sic] that under certain circumstances OCC will increase a clearing member's required contribution to OCC's clearing fund intra-month.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

The proposed change would permit OCC to increase the size of its clearing fund intra-month based upon observed changes in OCC's projected exposure or on an emergency basis as well as permit adjustments to a clearing member's required contribution to the clearing fund at any time, including between regular monthly calculations, under certain circumstances. OCC is filing this advance notice pursuant to Section 806(e)(1) of the Clearing Supervision Act[4] because the change could be deemed to materially affect the nature or level of risks presented by OCC. The proposed change will also be filed as a proposed rule change filing.

Purpose of the Proposed Change

OCC is proposing to modify Rule 1001, which concerns the sizing of OCC's clearing fund and the allocation of clearing member contributions thereto. First, by adding Interpretation and Policy .05, Rule 1001 would be revised to permit OCC to increase the size of its clearing fund intra-month based upon observed changes in OCC's projected exposure or on an emergency basis. Second, by adding Interpretation and Policy .06, Rule 1001 would be revised to permit increases to a clearing member's required contribution to the clearing fund at any time, including between regular monthly calculations, under certain circumstances. Rule 1001(b) and 1001(f) would also be revised to clarify certain terminology relating to the calculation of clearing fund contributions, and an Interpretation and Policy would be added to Article VIII, Section 2 of the By-Laws to clarify that this section, which addresses rule changes that increase a clearing member's required clearing fund contributions, does not apply to actions taken under Interpretations and Policies .05 or .06 to Rule 1001.

Background

The primary purpose of OCC's clearing fund is to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members fails to meet its obligations to OCC.[5] The clearing fund can also be used to meet the obligations resulting from the default of any bank or securities or commodities clearing organization to which OCC is exposed. The clearing fund supplements the financial safeguards afforded by OCC's membership standards and margin requirements.

Currently, the size of the clearing fund is adjusted monthly. On each business day OCC calculates its hypothetical exposure, at a confidence level of at least 99%, under simulated default scenarios that include an ''idiosyncratic default'' of a single clearing member group[6] and a ''minor systemic event'' involving the near-simultaneous default of two random clearing members. OCC then treats the greater of these two hypothetical exposures as that day's projected peak exposure. OCC also computes the projected draws from the clearing fund that would be necessary in connection with each business day's projected peak exposure. To determine the overall size of the clearing fund, on the first business day of each month, OCC averages these daily projected clearing fund draws over the prior month and uses that average as the required size of the clearing fund for that month. However, notwithstanding this calculation, in no event will the size of the clearing fund be set at less than 110% of the size of OCC's committed credit facilities secured by the clearing fund, in order to assure that at all times OCC will have collateral to pledge sufficient to draw the entire amount of such facilities. OCC publishes the new clearing fund requirement on the first business day of each month and clearing members have five business days to meet the new requirement.[7]

[15] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. *See* SR–OCC–2014–17; 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[4] 12 U.S.C. 5465(e)(1).

[5] *See,* Article VIII, Section 1 of OCC's By-Laws which sets forth the purpose of the clearing fund.

[6] A Clearing Member Group is a clearing member and any other clearing member that is affiliated with such clearing member. *See* Article 1, Section 1, C. (15) of OCC's By-Laws.

[7] *See* OCC Rules 1002 and 1003, respectively.

The foregoing calculations and the allocations among clearing members are based on the prescribed formulas included in Rules 1001(a) and 1001(b), respectively, as supplemented by Interpretation and Policy .01 to Rule 1001. These formulas were adopted pursuant to a change effective April 18, 2013.[8] The Rules do not, however, provide for increases to the overall size of the clearing fund between such monthly adjustments, nor do the Rules provide for adjustments to a clearing member's required contribution between such monthly calculations.

Proposed Change To Authorize Certain Adjustments to the Total Size of the Clearing Fund and Individual Clearing Members' Required Contributions

In order to mitigate the risks of an underfunding of the clearing fund, the proposed changes to the Rules would provide OCC with the authority to increase the total size of the clearing fund intra-month upon a significant and sustained increase in exposure based on daily projected clearing fund draw calculations, as described above, and on an emergency basis for the protection of OCC or in the public interest. The proposed changes would also provide OCC with the authority to increase a clearing member's required clearing fund contribution under certain circumstances reflecting a change in the clearing member's financial condition or risk profile.

Adjustments to the Overall Size of the Clearing Fund

OCC would have the authority to increase the overall size of the clearing fund intra-month in the event that the five-day rolling average of the projected draws against the clearing fund are 150% or more of the size of the clearing fund. This threshold is intended to ensure that intra-month increases in clearing fund size are limited to occasions in which the increase in exposure is significant and prolonged. Based on OCC staff's analysis of historical clearing fund data beginning in July 2011, the use of this 150% threshold would have resulted in only four changes to the clearing fund's size during this period, one of which related to firm-specific changes and three of which related to increased volatility prior to and during the events related to the downgrade of the U.S. Government's credit rating and the ongoing debt crisis of that period. In the event that the 150% threshold is exceeded over a five-day period, OCC's Executive Chairman or President would have the authority to approve an increase in the clearing fund's size. The Risk Committee of OCC's Board would be informed of such officer's determination as soon as practicable. OCC would also provide notification to the SEC and CFTC in the same manner as if an emergency waiver or suspension of OCC's Rules occurred.[9]

The Risk Committee would also be permitted to approve an increase in the clearing fund's size on an emergency basis upon its determination that such action is necessary for the protection of OCC or in the public interest, and OCC would then provide notification to the Board of Directors, SEC and CFTC in the same manner as if an emergency waiver or suspension of OCC's Rules occurred.[10] OCC believes that these processes ensure proper management and board-level oversight regarding decisions to increase the clearing fund size.

Upon an intra-month increase in the clearing fund's size, clearing members would generally be given two business days to satisfy any deficit,[11] and the increase would generally remain in effect until the next regular monthly calculation occurs unless the Risk Committee determines that a further increase is warranted or the 150% threshold is triggered more than once during the same month. The foregoing changes to OCC's Rules would not affect the basic clearing fund methodology as previously approved by the SEC, nor would they affect allocation of the clearing fund among clearing members.[12] OCC has discussed the proposed changes with its Financial Risk Advisory Council, a working group consisting of representatives of clearing members and exchanges formed by OCC to review and comment on various risk management proposals. They additionally were discussed with the OCC Operations Roundtable, also consisting of representatives of clearing members and exchanges, which considers operational efficiencies and improvements. No concerns were raised by either working group during the course of these discussions.

Adjustments to Individual Clearing Members' Required Contributions

The proposed change would also permit OCC to increase individual clearing members' required clearing fund contributions in three circumstances. The first circumstance exists when a clearing member's required clearing fund contribution exceeds its net capital.[13] In this situation, the clearing member is placed on OCC's ''Watch Level III'' surveillance, which is used to assess a clearing member's ability to meet a call to replenish its clearing fund contribution and requires certain OCC executive officers to consider protective measures with respect to such clearing member. One such protective measure would be to add the amount of such excess to the clearing member's required clearing fund contribution, thereby funding such difference in advance of the regular monthly calculation.[14] No subsequent adjustment thereunder would be permitted under the applicable Rule provision until the earlier of the next adjustment of the clearing fund (either as a result of the next monthly adjustment or as a result of an increase in the total clearing fund pursuant to the changes described above) or the next required reporting of the clearing member's net capital.

The second circumstance is the merger or consolidation of two or more clearing members, in which case the variable amount of the required clearing fund contribution for the surviving clearing member would be adjusted so that it equals the sum of such amount

[8] Securities Exchange Act Release No. 69403 (April 18, 2013), 78 FR 24257 (April 24, 2013) (SR–OCC–2013–02).

[9] *See* OCC's By-Laws Article IX, Section 14.

[10] In recommending that the Risk Committee approve an emergency increase in the size of the clearing fund, OCC would follow the process set forth in OCC's By-Laws Article IX, Section 14 in that the Executive Chairman, Management Vice Chairman or President, in his, her or their judgment, would determine that: (1) An emergency exists, and (2) such an increase is necessary or advisable for the protection of OCC or otherwise in the public interest.

[11] Intra-month clearing fund adjustments will only occur in limited circumstances and will be due to certain events that could materially affect the overall liquidity of OCC. Based on feedback OCC received from clearing members, OCC believes that providing a clearing member with one day to absorb the increase, including determining the most effective manner in which to collateralize the increase, and a second day to fund the increase strikes the proper balance between effective risk management and not causing material disruptions to a clearing member's business.

[12] In particular, the contributions of futures-only affiliated clearing members and clearing members depositing the required minimum clearing fund contribution, respectively, would not be adjusted in connection with any increase in the clearing fund size.

[13] In this context, and for clearing members that are registered broker-dealers, net capital means net capital computed in accordance with Securities Exchange Act Rule 15c3–1. For clearing members that are futures commission merchants, net capital means adjusted net capital computed in accordance with CFTC Regulation Section 1.17 and for Canadian clearing members, net capital means risk-adjusted capital computed in accordance with Investment Industry Regulatory Organization of Canada Rule 17.1.

[14] Pursuant to Interpretation and Policy .01 to Article VIII, Section 5 of OCC's By-Laws, a clearing member's clearing fund contribution is used to determine the clearing member's share of any clearing fund deficiency resulting from a clearing member insolvency.

for the surviving clearing member and the total of such amounts for all other clearing members involved in the transaction. Such adjusted amount would be substituted for the variable amount previously calculated for the surviving clearing member.

The third circumstance is the transfer of positions between clearing members, in which case OCC would be able to adjust the clearing fund contributions of the transferor clearing member and the transferee clearing member after giving effect to the transfer, subject to the agreement of the two clearing members. The amount of such adjustment would affect the variable amount of each clearing member's required clearing fund contribution and, irrespective of the amount or size of the positions transferred, each clearing member would continue to be required to maintain OCC's minimum clearing fund contribution.

Proposed Changes to By-Laws and Rules

OCC is proposing to add an Interpretation and Policy .05 under Rule 1001 to provide for the authority to increase the size of the clearing fund on an intra-month basis. Subparagraph (a) of proposed Interpretation and Policy .05 would authorize OCC's Executive Chairman or President, or the Risk Committee, to increase the clearing fund size as described above (*i.e.,* based on the daily calculations or by the Risk Committee on an emergency basis). Proposed Interpretation and Policy .06 under Rule 1001 would provide for the authority to increase individual clearing members' required clearing fund contributions in certain circumstances. Subparagraph (a) would provide for an increase when a clearing member's required clearing fund contribution exceeds its net capital, subparagraph (b) would provide for an increase in the event of a merger or consolidation involving clearing members and subparagraph (c) would provide for an increase in the event of a transfer of positions between clearing members, in each case as described above.

Subparagraph (b) of proposed Interpretation and Policy .05 and subparagraphs (a), (b) and (c) of proposed Interpretation and Policy .06 would provide that if the total size of the clearing fund size or an individual clearing member's required contribution is increased, as applicable, the variable amount would be increased accordingly for each clearing member, and this increase would be effective for all purposes under OCC's By-Laws and Rules, including each clearing member's required contribution in the event the clearing fund is fully depleted in connection with the insolvency of a clearing member.[15] However, subparagraph (b) of proposed Interpretation and Policy .05 and subparagraphs (a), (b) and (c) of proposed Interpretation and Policy .06 would specify that the variable amount would remain subject to nonstandard calculations for futures-only affiliated clearing members and clearing members that have deposited the minimum required clearing fund contribution.

An example will illustrate the manner in which the total size of the clearing fund and individual clearing members' contributions could be adjusted pursuant to Interpretation and Policy .05 to Rule 1001. The example assumes that OCC's total clearing fund requirement is $1 million divided among five clearing members. Member One has the minimum requirement of $150,000, Member Two has a requirement of $212,500 and the other three comprise the remainder in differing amounts. If OCC determined, based on the most recent five-day rolling average of clearing fund draws, that it should resize the fund to $1.5 million, Member One would maintain the minimum requirement of $150,000 and the other four members would be assessed the incremental amount totaling $500,000. Member Two would be assessed $125,000 because the firm's *pro rata* share of the original clearing fund requirement excluding Member One's minimum requirement equaled 25%, *i.e.,* $212,500 divided by $850,000. Member Two's new clearing fund requirement would be $337,500 until the next clearing fund sizing calculation. The other three members would be assessed their share of the remaining $375,000 (using a denominator of $850,000 as with Member Two) so that the total clearing fund requirement of $1.5 million is satisfied.

Subparagraph (c) of proposed Interpretation and Policy .05 and subparagraph (d) of proposed Interpretation and Policy .06 would provide that as soon as practicable after any increase in the total size of the clearing fund size or an individual clearing member's required contribution, as applicable, OCC would provide notice to the affected clearing members, and such clearing members would be required to satisfy their deficits within two business days of such notice in the case of adjustments pursuant to Interpretation and Policy .05 and one business day in the case of adjustments pursuant to Interpretation and Policy .06. If, however, any deficit would be required to be satisfied on the first, second, third or fourth business day of a calendar month, it may instead be satisfied by the fifth business day of the calendar month. These subparagraphs also set forth that a resulting change in a clearing member's contribution to the clearing fund due to an increase in the clearing fund's size or an individual adjustment will be reflected on one or more reports made available by OCC, but that OCC will not revise the clearing member's Clearing Fund Statement.

Subparagraph (d) of proposed Interpretation and Policy .06 would further specify that OCC may require any deficit resulting from a merger of clearing members or the transfer of positions between clearing members to be satisfied prior to the occurrence of the merger or transfer. Moreover, subparagraph (e) of proposed Interpretation and Policy .06 would clarify that the individual adjustments under subparagraphs (a), (b), and (c) of proposed Interpretation and Policy .06 may result in an adjustment to the total size of the clearing fund.

To enhance the readability of the new Interpretations and Policies added to Rule 1001, the term ''fixed amount'' would be used to refer to the portion of a clearing member's clearing fund contribution calculated pursuant to clause (x) of Rule 1001(b), and the term ''variable amount'' would be used to refer to the portion of a clearing member's clearing fund contribution calculated pursuant to clause (y) of Rule 1001(b). Rule 1001(b) and 1001(f) would be amended solely for the purpose of introducing these defined terms.

Article VIII, Section 2(b) of OCC's By-Laws provides, among other things, that if a clearing member's clearing fund contribution is increased as a result of an amendment of the Rules, the increase will not be effective until the clearing member is given five business days' notice of the amendment. OCC proposes to add Interpretation and Policy .01 to Article VIII, Section 2 to clarify that such section shall not apply to increases in the total size of the clearing fund pursuant to Interpretation and Policy .05 of Rule 1001, nor to an increase in an individual clearing member's contribution pursuant to Interpretation and Policy .05 or .06 of Rule 1001.

While the proposed change may require clearing members to increase their clearing fund contributions at any time during a month, any such increase in the overall size of the clearing fund would correspond to a material change in OCC's projected exposure and would affect all clearing members

[15] *See* Interpretation and Policy .01 to Article VIII, Section 5 of OCC's By-Laws.

proportionally in the same manner as a monthly adjustment, and any such increase in an individual clearing member's required contribution would correspond to a material change in the clearing member's business or financial condition, as well as use of OCC's resources. OCC therefore does not believe that clearing members will have significant problems in complying with the change. In addition to the prior communications with clearing members described above, in connection with the filing of this change, OCC will inform clearing members of the proposed change via an information memorandum, in order to advise clearing members of the procedures OCC intends to implement in support of the proposed change, including notice procedures to advise clearing members of any increases in contribution amounts.

Statutory Basis for the Proposed Change

OCC believes that the proposed change to OCC's Rules is consistent with Section 805(b) of the Clearing Supervision Act [16] because the proposed change will reduce systemic risk.[17] OCC believes that the proposed changes to its clearing fund sizing, as described above, will reduce the risk that the size of OCC's clearing fund would be insufficient should OCC need to use clearing fund assets to close-out positions of a defaulted clearing member. For the same reasons, the proposed change will reduce systemic risk because it will promote confidence that OCC will be able to timely meet its settlement obligations because the proposed change will diminish the likelihood that OCC's clearing fund would be insufficient in the event of a clearing member default. The proposed change is not inconsistent with the existing Rules of OCC, including any other Rules proposed to be amended or any advance notice filings pending with the Commission.

Anticipated Effect On and Management of Risk

OCC believes that the proposed change will reduce OCC's overall level of risk because the proposed change makes it less likely that OCC's clearing fund would be insufficient should OCC need to use its clearing fund to manage a clearing member default. As described above, the proposed change would provide OCC with the ability to increase the overall size of its clearing fund as result of a projected increase in anticipated draws or for the protection of OCC. In addition, OCC would have the ability to increase individual clearing member's clearing fund contribution as a result of certain events such as a change in net capital, a merger or a transfer of positions. This flexibility will allow OCC to adjust the size of its clearing fund in response to events that may occur in between normal monthly clearing fund calculations, and therefore makes it less likely that OCC's clearing fund would be insufficient should OCC need to use its clearing fund to manage a clearing member default. Accordingly, OCC's overall level of risk will be reduced as a result of this proposed change. Moreover, and for the same reasons, the proposed change will facilitate OCC's ability to manage risk.

[16] 12 U.S.C. 5464(b).

[17] 12 U.S.C. 5464(b)(3).

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The designated clearing agency may implement this change if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission receives the notice of proposed change, or (ii) the date the Commission receives any further information it requests for consideration of the notice. The designated clearing agency shall not implement this change if the Commission has an objection.

The Commission may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Commission providing the designated clearing agency with prompt written notice of the extension. The designated clearing agency may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.

The designated clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[18]

[18] OCC also filed the the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. *See supra* note 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2014–804 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–2014–804. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_804.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–2014–804 and should be submitted on or before September 5, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19331 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72802; File No. SR–ICC–2014–13]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Provide for the Clearance of Additional Standard Emerging European and Middle Eastern Sovereign Single Names

August 11, 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 31, 2014, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. 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 purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Section 26D of its Rules to provide for the clearance of additional Standard Emerging Sovereign Single Name constituents of the CDX Emerging Markets Index (''SES Contracts''). Currently, ICC clears six SES Contracts: Four Standard Latin America Sovereign Single Name constituents of the CDX Emerging Markets Index and two Standard Emerging European and Middle Eastern Sovereign Single Names that have been constituents of the CDX Emerging Markets Index (the ''SEEME Contracts''). The proposed changes to the ICC Rules would provide for the clearance of additional SEEME Contracts, specifically the Republic of Hungary and the Republic of South Africa.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. Currently, ICC clears six SES Contracts: Four Standard Latin America Sovereign Single Name constituents of the CDX Emerging Markets Index (the Federative Republic of Brazil, the United Mexican States, the Argentine Republic, and the Bolivarian Republic of Venezuela) and two SEEME Contracts (the Republic of Turkey and the Russian Federation). ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of two additional SEEME Contracts, specifically the Republic of Hungary and the Republic of South Africa. ICC currently clears Series 14–21 of the CDX Emerging Markets Index. Of the CDX Emerging Markets Indices cleared by ICC, the Republic of Hungary is a constituent of the CDX Emerging Markets Index, Series 14–18, and the Republic of South Africa is a constituent of the CDX Emerging Markets Index, Series 14–21. These two additional SEEME Contracts will initially be offered on the 2014 ISDA Credit Derivatives Definitions. The addition of these SEEME Contracts will allow market participants an increased ability to manage risk, by providing market participants the ability to offset related index positions.

These additional SEEME Contracts have terms consistent with the other SEEME Contracts currently cleared by ICC and governed by Subchapter 26D of the ICC rules, namely the Russian Federation and the Republic of Turkey. Minor revisions to Subchapter 26D (Standard Emerging Sovereign (''SES'') Single Name) are made to provide for clearing the additional SEEME Contracts and described as follows.

ICC Rule 26D–102 is also modified to include the Republic of Hungary and the Republic of South Africa in the list of specific Eligible SES Reference Entities to be cleared by ICC. The addition of these products does not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Act.

Section 17A(b)(3)(F) of the Act[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The clearance of additional SEEME Contracts will allow market participants an increased ability to manage risk. ICC believes that acceptance of these new contracts, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[4]

Clearing of the additional SEEME Contracts will also satisfy the requirements of Rule 17Ad–22.[5] In particular, in terms of financial resources, ICC will apply its existing margin methodology to the additional SEEME Contracts. ICC believes that this model will provide sufficient margin to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad–22(b)(2).[6] In addition, ICC believes its Guaranty Fund, under its existing methodology, will, together with the required margin, provide sufficient financial resources to support the clearing of the new contracts consistent with the requirements of Rule 17Ad–22(b)(3).[7] ICC also believes that its existing operational and managerial resources will be sufficient for clearing of the additional SEEME Contracts, consistent with the requirements of Rule 17Ad–22(d)(4),[8] as the new contracts are similar from an operational perspective to existing SEEME Contracts. Similarly, ICC will use its existing settlement procedures and account structures for the new contracts, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15)[9] as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures. Finally, ICC will apply its existing default management policies and procedures for the new contracts. ICC believes that these procedures allow for it to take timely

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Id.

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(b)(2).

[7] 17 CFR 240.17Ad–22(b)(3).

[8] 17 CFR 240.17Ad–22(d)(4).

[9] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional SEEME Contracts, in accordance with Rule 17Ad–22(d)(11).[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The additional SEEME Contracts will be available to all ICC Participants for clearing. The clearing of these additional SEEME Contracts by ICC does not preclude the offering of the additional SEEME Contracts for clearing by other market participants. Therefore, ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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–ICC–2014–13 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–ICC–2014–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2014–13 and should be submitted on or before September 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19329 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.17Ad–22(d)(11).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72810; File No. SR–NASDAQ–2014–078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Incentive Program Under Rule 7014, and the Schedule of Fees and Rebates Under Rule 7018

August 11, 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 August 1, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to make changes to the Qualified Market Maker (''QMM'') Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. NASDAQ will begin assessing the fees effective August 1, 2014.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend a fee under Rule 7014(e) assessed members participating in the QMM Incentive Program, and is proposing several changes to the schedule of fees and credits applicable to execution and routing of orders under Rule 7018, all of which are described in detail below.

QMM Incentive Program

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer (''NBBO'') in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a ''QMM MPID''), as described under Rule 7014(e). These benefits include a lower rate charged for executions of orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through a QMM MPID.[3] Under Rule 7014(e)(3), the current charge assessed on a member for removing liquidity in securities priced at $1 or more per share on NASDAQ is $0.0030 per share executed in a NASDAQ-listed security. QMM MPIDs, however, receive a lower charge of $0.0029 per share executed for removing liquidity in securities priced at $1 or more per share listed on exchanges other than NASDAQ. NASDAQ is proposing to increase this charge from $0.0029 to $0.00295. NASDAQ notes that both the current and proposed fees are lower than the rate assessed under the rule for NASDAQ-listed securities. This is reflective of the Exchange's continued desire to provide incentives to attract order flow to the Exchange in securities listed on exchanges other than NASDAQ. The modest increase in the fee is indicative of the success of the lower fee in attracting such order flow.

Amended Fees for Execution and Routing of Securities Listed on Any Domestic Market (Tapes A, B, and C)

NASDAQ is proposing changes to the credits provided to members executing or routing securities listed on any domestic exchange. NASDAQ notes that the eligibility requirements and credits provided by each of the proposed changes hereunder are identical among all three categories of securities (i.e., Tapes A, B, and C). As such, NASDAQ is discussing the proposed changes to the credits provided for activity in each category of security in this section.[4]

NASDAQ is proposing to provide two new credits for providing displayed quotes and orders (other than Supplemental Orders) that provide liquidity. The two new credits are based, at least in part, on a member's activity during the Opening and Closing Crosses. First, NASDAQ is proposing a new credit of $0.00293 per share executed to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs (''MPIDs'') that represent more than 0.10% of Consolidated Volume during the month, with shares executed in the Opening and Closing Cross that represent more than 0.20% of Consolidated Volume and orders entered through a single MPID that represent more than 0.50% of Consolidated Volume during the month. Second, NASDAQ is proposing to provide a new credit of $0.0028 per share executed to members with shares of liquidity provided in the Opening and Closing Crosses, excluding Market-on-Close, Limit-on-Close, Market-on-Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its MPIDs that represent more than 0.01% of Consolidated Volume during the month. NASDAQ notes that the proposed credits incentivize members to provide liquidity in the opening and closing processes in return for receiving benefits and incentives for adding displayed liquidity. Taken together, these two new tiers are designed as incentives to members to provide liquidity at the open, during the trading day, and the close, which improve price discovery for the benefit of all investors. The lower credit allotted to members providing more than 0.01% of Consolidated Volume during the month is reflective of the lower level of improvement to market provided by the qualifying member.

NASDAQ provides credits to members that provide certain levels of midpoint orders per month. The credits range from $0.0005 to $0.0017 per share executed, increasing as the levels of midpoint orders increase and meet the next tier's requirements. NASDAQ is proposing to provide a new credit of $0.0020 per share executed to members that provide non-displayed midpoint orders that provide an average daily volume of 6 million or more shares through midpoint orders during the month. As a consequence, NASDAQ is also proposing to modify the eligibility requirements for the existing $0.0017 credit provided to members that provide non-displayed midpoint order liquidity. Currently, NASDAQ requires a member to provide an average daily volume of 5 million or more shares through midpoint orders during the month. In light of the proposed new $0.0020 credit, NASDAQ is proposing to place a ceiling on the existing $0.0017 credit eligibility requirement of up to an average daily volume of 6 million shares through midpoint orders during the month. Accordingly, a member may qualify for the $0.0017 credit by providing average daily volume of between 5 million and less than 6 million shares through midpoint orders during the month.

Amended Fees for Execution and Routing of Securities Listed on NASDAQ (Tape C)

NASDAQ is proposing to assess a new charge under Rule 7018(a)(1) on members for executing against resting midpoint liquidity. The current default rate for removing liquidity from NASDAQ in NASDAQ-listed securities is $0.0030. NASDAQ is proposing to assess a lower charge of $0.0027 for removing midpoint liquidity. NASDAQ notes that the proposed new fee is identical to fees currently assessed by NASDAQ for such activity in securities listed on NYSE or exchanges other than NASDAQ and NYSE.

Amended Fees for Execution and Routing of Securities Listed on NYSE (Tape A)

NASDAQ is proposing to modify certain fees assessed under Rule 7018(a)(2), which apply to quotes and orders in securities listed on NYSE. NASDAQ assesses a fee of $0.0029 per share executed on members that enter

[3] Rule 7014(e)(3) further requires, however, that after the first month in which an MPID becomes a QMM MPID, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) is not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).

[4] Notwithstanding that the rule text discussed hereunder is identical for each category of security, the eligibility requirements apply to the individual type of security transacted. Accordingly, a member's activity in each category of security is not aggregated to meet eligibility requirements.

Market-on-Close (''MOC'') and/or Limit-on-Close (''LOC'') orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. NASDAQ originally introduced the discount charge because it believed that members that participate in the NASDAQ Closing Cross to a significant extent through the use of MOC and/or LOC orders are frequently acting on behalf of institutional investor customers.[5] At the time, NASDAQ believed that members may have been giving NASDAQ lower relative priority in their order routing decisions due to its relatively high fees for accessing liquidity, as compared with lower cost exchanges. As a consequence, liquidity providers on NASDAQ may have been receiving larger orders that had already attempted to access liquidity elsewhere, such that the order was more likely to have an impact on the price of the stock. NASDAQ hoped that by lowering the fees for these members they would be encouraged to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers. Moreover, NASDAQ hoped to encourage greater use of its Closing Cross through the reduction in the charge. NASDAQ notes that reduced rate has not materially improved the market in Tape A securities and therefore is proposing to increase the charged assessed from $0.0029 to $0.00295 per share executed.

NASDAQ is also proposing to amend the charge assessed members for DOT or LIST Orders that execute in the NYSE opening process or reopening process. Currently, NASDAQ assesses a charge of $0.0005 per share executed, but limits the charge to $15,000 per month per member. NASDAQ is proposing to eliminate the $15,000 per month per member fee cap, which will allow the Exchange to more closely align the fee to costs incurred by NASDAQ in routing such orders to other venues, which are not capped.

NASDAQ is proposing to adopt a new credit provided to members that qualify under certain requirements of the Market Quality Incentive Programs of Rule 7014. Specifically, NASDAQ will provide a credit of $0.0001 per share executed to a member that either qualifies for a credit under Rule 7014(c)(3)[6] or that is designated as a QMM under Rule 7014(d). The credit provided is based on the shares executed through the qualifying MPID under Rules 7014(c)(3) or 7014(d), and is provided in addition to any other credit or rebate for which the member may qualify. NASDAQ notes that the credit will provide additional incentive to members to improve the quality of the market in NYSE-listed securities on NASDAQ.

Amended Fees for Execution and Routing of Securities Listed on Exchanges Other Than NASDAQ and NYSE (Tape B)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(3). Specifically, NASDAQ is proposing to increase the charge assessed members that enter MOC and/or LOC orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. Like the charge assessed for such orders in Tape A securities, as discussed above, NASDAQ currently assesses a charge of $0.0029 per share executed. For the same reasons noted above with respect to Tape A securities, NASDAQ is proposing to increase the charge to $0.00295 per share executed in Tape B securities.

Amended Fees for Execution in the Closing and Opening Crosses

Rule 7018(d) sets forth fees assessed for executions received in the Closing Cross. The rule provides a default fee of $0.0002 per share executed assessed for all other quotes and orders not otherwise noted under the rule, and several tiers of fees for MOC and LOC orders executed in the Closing Cross. The Exchange is proposing to increase the default fee from $0.0002 to $0.0003 per share executed in the Closing Cross.

NASDAQ is also proposing to amend the charges assessed for MOC and LOC orders executed in the Closing Cross. Specifically, under Tier A NASDAQ assesses a fee of $0.00065 per executed share for shares of liquidity provided in all securities through one or more of its MPIDs that represent above 1.40% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume. NASDAQ is proposing to increase the Tier A fee to $0.0008 per executed share. Similarly, NASDAQ is proposing to increase the fee assessed under Tier F of the rule. NASDAQ assesses a fee of $0.0014 per executed share for shares of liquidity provided in all securities through one or more of its MPIDs that represent 0.00% to 0.015% of Consolidated Volume. NASDAQ is proposing to increase the fee under Tier F to $0.0015 per executed share.

Rule 7018(e) sets forth fees assessed for quotes and orders executed in the Opening Cross. NASDAQ is proposing to increase fees assessed for shares executed in the Opening Cross. Currently, the default charge assessed for all other quotes and orders executed in the Closing Cross not otherwise noted under the rule is $0.0002 per share executed. NASDAQ is proposing to increase the charge to $0.0003 per share executed.

NASDAQ is also proposing to also increase the charge assessed for Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Opening Cross. Currently, NASDAQ assesses a charge of $0.0010 per share executed, which NASDAQ proposes to increase to $0.00015 per share executed.

The proposed increases to the fees assessed for executions in the Closing and Opening Crosses will help the Exchange recapture some of the costs it incurs operating the cross system, while maintaining relatively low fees for the execution of orders in these crosses.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the change to the QMM Program is reasonable because it represents a modest increase to an incentive fee, while maintaining a discount to the default rate, which NASDAQ believes will continue to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities that are not listed on NASDAQ. As noted, the QMM Program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the

[5] Securities Exchange Act Release No. 68421 (December 13, 2012), 77 FR 75232 (December 19, 2012) (SR–NASDAQ–2012–135).

[6] Rule 7014(c)(3) provides the highest credit under the Investor Support Program and, consequently, has the most stringent requirements among the credit tiers of the program.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4) and (5).

execution of orders. NASDAQ believes that the modest increase in the already discounted fee will not materially affect the quality of the market with respect to securities that are not listed on NASDAQ. As such, NASDAQ believes that modestly increasing the fee is an equitable allocation of a reasonable fee. Moreover, NASDAQ believes that increasing the already discounted fee is not unfairly discriminatory because it continues to apply a lower incentive rate in securities in Tape A and B securities, where the reduced fee has been effective in improving the market in such securities on NASDAQ. By contrast, NASDAQ eliminated a reduced rate in NASDAQ-listed securities after observing that the lower fee did not materially increase the quality of the market in those securities.[9] Accordingly, NASDAQ's proposed change is designed to maintain the benefits associated with the QMM program while reducing its cost, thereby making the program sustainable in the longer term.

The proposed new $0.00293 and $0.0028 per share executed credits under Rules 7018(a)(1), (2), and (3) are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because they provide credits in return for providing meaningful improvement to the market. The credits are reasonable because they are in-line with similar credits provided under the rules noted above for providing other measures of meaningful improvement to the market. The proposed two new credits are equitably allocated because, like other credits under the rules, all members are eligible to receive the credits if they meet the specific eligibility requirements.

Similarly, NASDAQ believes that the proposed new $0.0020 per share executed credit provided for midpoint orders that provide liquidity, and the related modification to the eligibility requirement of the $0.0017 per share executed credit, under Rules 7018(a)(1), (2), and (3) are consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because they provide credits in return for providing meaningful improvement to the market. The new, higher credit tier is designed to provide members with an opportunity to achieve a higher credit rate in return for providing market improvement through liquidity-providing midpoint orders. NASDAQ does not believe that the addition of the new credit tier is unfairly discriminatory because all members are eligible to achieve the higher credit rate by meeting the eligibility requirement.

NASDAQ believes that the proposed new fee of $0.0027 per share executed for members that execute against resting midpoint liquidity under Rule 7018(a)(1) is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it assesses a fee on activity that removes liquidity from the market, which is consistent with other fees assessed for removing liquidity from NASDAQ. NASDAQ believes the new fee is reasonable and equitably allocated because it is a lower fee than the default rate assessed for removing liquidity from NASDAQ and is identical to the fees assessed for removal of liquidity in midpoint orders in securities listed on NYSE or exchanges other than NASDAQ or NYSE. NASDAQ does not believe that the addition of the new fee is unfairly discriminatory because the fee eliminates a current distinction made in the rules whereby identical orders in non-NASDAQ-listed securities are assessed a fee whereas NASDAQ-listed orders are not.

NASDAQ believes that the proposed increase in the charge assessed on members with MOC and/or LOC orders in securities listed on NYSE or exchanges other than NASDAQ or NYSE, which are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the month is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it is a modest increase in a fee designed to incentivize members to provide greater priority to NASDAQ. As noted, the reduced fee has not been entirely effective at modifying member behavior and, as a consequence, NASDAQ is increasing the fee to offset the cost of offering the incentive. The increased fee will continue to be less than the default rate assessed for orders that execute in the NASDAQ Market Center.

NASDAQ believes that the proposed new $0.0001 per share executed credit in NYSE-listed securities provided to members that either qualify for a credit under Rule 7014(c)(3) or that is designated as a QMM under Rule 7014(d) is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it is designed to provide members with additional incentive to improve market quality. NASDAQ believes that the credit is reasonable because it promotes participation in the Market Quality Incentive Programs, which are designed to improve market quality. Moreover, the Exchange believes that the credit is equitably allocated because any member that meets the requirements of either Rule 7014(c)(3) or 7014(d) will receive the credit for its executions in NYSE-listed securities. NASDAQ believes that the proposed credit is not unfairly discriminatory because it is available to all members that choose to improve market quality in NYSE-listed securities on NASDAQ and the Exchange believes this incentive will increase liquidity in Tape A securities, whereas the Exchange does not believe that such an incentive is needed in Tapes B and C securities at this juncture. NASDAQ must balance its desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them. As a consequence, NASDAQ must choose carefully the credits it provides, so that it promotes activity it deems most important while foregoing offering other credits, which may also improve market quality yet prove too costly.

Lastly, NASDAQ believes that the changes to the fees assessed for participation the Opening and Closing Crosses are consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. NASDAQ believes that the fees are reasonable because supporting the crosses requires capital investment to maintain a system that facilitates an orderly auction process, and the proposed increases are modest and designed to offset the costs the Exchange incurs in operating the crosses. Moreover, the proposed fees are equitably allocated because they apply a fee on all members that benefit from participation in the Opening and Closing Crosses, and are based on the type of order entered and contribution to market quality. Similarly, the proposed fees are not unfairly discriminatory because they are based on the type of order executed in the crosses and the benefit to market quality that such orders provide. Specifically, NASDAQ believes that the proposal to increase the default charges assessed for executions in the crosses is reasonable, equitably allocated and not unfairly discriminatory because the increased fees are identical in amount and apply to all members that elect to participate in the crosses and receive an execution. Moreover, NASDAQ does not believe that the increased fees will negatively impact participation in the crosses. NASDAQ believes that the proposed increase in fees assessed for MOC and LOC orders executed in the Closing Cross under Tiers A and F is reasonable,

[9] Securities Exchange Act Release No. 71530 (February 12, 2014), 79 FR 9553 (February 19, 2014) (SR–NASDAQ–2014–015).

equitably allocated and not unfairly discriminatory because in adopting the tiered fees, the Exchange sets the fees to reasonably cover the costs and investments required to operate the Closing Cross. As is the case with all tiered fees, members are able to lower their fees by transacting more volume during the Closing Cross. NASDAQ believes that the proposed increase in the fee assessed for Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Opening Cross is reasonable, equitably allocated and not unfairly discriminatory because, like the other increases to the fees assessed members for participation in the crosses, the proposed increase is modest and applies to all members participating in the Opening Cross that enters, and receives execution of, the order types listed by the rule. Like the other proposed fee increases relating to the crosses, this increase will help offset the costs associated with operating the Opening Cross.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[10] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the QMM program may limit the benefits of the program in non-NASDAQ-listed securities, the incentive program in question remains in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. The changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. The new and increased fees for execution in the NASDAQ crosses are reflective of a need to support and improve NASDAQ systems, which in turn benefit market quality and ultimately, competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[11] and paragraph (f)[12] of Rule 19b–4, thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2014–078 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2014–078. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2014–078, and should be submitted on or before September 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19336 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72803; File No. SR–OCC–2014–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice To Better Manage Risks Concentration and Other Risks Associated With Accepting Deposits of Common Stocks for Margin Purposes

August 11, 2014.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] of the Securities Exchange Act of 1934 notice is hereby given that on July 16, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I and II below, which Items have been prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with a proposed change that would permit OCC to better manage concentration and other risks (i.e., wrong-way risk) associated with accepting deposits of common stock for margin purposes. In order to manage such risks, OCC proposes to add an proposed Interpretation and Policy that will provide OCC with discretion with respect to giving value to margin collateral deposited by a single clearing member.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

1. Purpose

The purpose of the proposed change is to permit OCC to better manage concentration risk and other risks (i.e., wrong-way risk) associated with accepting deposits of common stock for margin purposes.[4] Accordingly, in order to manage such risks, OCC proposes to add an Interpretation and Policy to Rule 604, which specifies the forms of margin assets accepted by OCC, that will provide OCC with discretion with respect to giving value to assets deposited by a single clearing member to satisfy its margin requirement(s). In addition, OCC proposes to make clarifying amendments to an existing Interpretation and Policy under Rule 604 that gives OCC discretion to not give value to a particular type of margin collateral across all clearing members.

Background

OCC Rule 604 lists the types of assets that clearing members may deposit with OCC to satisfy their margin requirement(s) as well as sets forth eligibility criteria for such assets. Common stocks, including Exchange Traded Funds (''ETFs'') and Exchange Traded Notes (''ETNs''), are the most common form of margin assets deposited by clearing members and currently comprise 68% of the $60.6 billion in clearing member margin deposits held by OCC (not including deposits in lieu of margin). Since 2009, OCC has used STANS, its daily automated Monte Carlo simulation-based margining methodology, to value common stocks deposited by clearing members as margin.[5] The value given to margin deposits depends on factors that include the price volatility and the price correlation relationship of common stock collateral to the balance of the cleared portfolio. The approach used by STANS incentivizes clearing members who chose to meet their margin obligations with deposits of common stocks to choose common stocks that hedge their related open positions.

Notwithstanding the value STANS gives to deposits of common stocks, certain factors warrant OCC adjusting the value STANS gives to all clearing member margin deposits of a particular type of margin collateral. Such factors are set forth in Rule 604, Interpretation and Policy .14, and include the number of outstanding shares, number of outstanding shareholders and overall trading volume. OCC is proposing to add a new Interpretation and Policy to Rule 604 (the ''Interpretation'') so that OCC has discretion to not give margin credit to a particular clearing member when such clearing member deposits a concentrated amount of any common stock and when a common stock, deposited as margin, presents ''wrong-way risk'' to OCC. In addition, the Interpretation will provide OCC discretion to grant margin credit to a clearing member when it deposits shares of common stock that serve as a hedge to the clearing member's related open positions and would otherwise be not be given margin credit.[6]

Concentrated Deposits of Common Stock

OCC has determined that in the event it is necessary to liquidate a clearing member's positions (including the clearing member's margin collateral), OCC may be exposed to risk arising from a large quantity of a particular common stock deposited as margin by a clearing member. Specifically, depending on the relationship between the average daily trading volume of a particular security and the number of outstanding shares of such security deposited by a clearing member as margin, it is possible that the listed equities markets may not be able to quickly absorb all of the common stock OCC seeks to sell, or OCC may not be able to auction such securities, without an appreciable negative price impact. This occurrence, referred to as ''concentration risk,'' is greatest when the number of shares being sold is large and the average daily trading volume is low.

OCC's existing authority to not give value to otherwise eligible forms of margin is broad in its application since such authority only provides OCC with the discretion to not give value across all clearing member deposits of a particular common stock. However, concentration risk may be a clearing member and account-specific risk. In order to mitigate the concentration risk of a single clearing member, OCC plans to implement automated processes to monitor the composition of a clearing member's margin deposits. Such processes will identify concentration risk at both an account level and across all accounts of a clearing member. OCC proposes to add the Interpretation so that OCC has discretion to limit the margin credit granted to an individual clearing member that maintains a

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4. *See* SR–OCC–2014–14.

[4] This proposed change has also been filed as a proposed rule change filing (SR–OCC–2014–14).

[5] *See* Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20).

[6] Consistent with the language contained in existing Interpretation & Policy .14, the Interpretation provides OCC with discretion in determining the amount of margin credit given to deposits of common stock by an individual clearing member as such determination would be based on positions held and common stock deposits made by such clearing member on a given business day. However, as discussed in the following two sections, OCC also has developed certain automated processes as well as additional internal policies that describe how OCC presently intends to exercise such discretion. These additional internal policies are included in OCC's collateral risk management policy, which will not be implemented until approval of this rule change with changes thereto being subject to additional rule filings.

concentrated margin deposit of otherwise eligible common stock.

For the reasons stated above, OCC considers a common stock's average daily trading volume and the number of shares a clearing member deposited as margin to be the two most significant factors when making a decision to limit margin credit due to concentration risk. Accordingly, OCC will not give margin credit to clearing member margin deposits of a particular common stock in respect of a particular account when the deposited amount of such common stock is in excess of two times the average daily trade volume of such common stock over the most recent three month period. OCC's systems will continually assess the composition of clearing member margin deposits for each account maintained by the clearing member, including intra-day collateral substitutions in such accounts, to determine if a clearing member has a margin deposit with a concentrated amount of common stock. With respect to a given account, OCC's systems will automatically set appropriate limits on the amount of a particular common stock for which a clearing member may be given margin credit for any one of a its tier accounts. In addition, and with respect to all of a clearing member's accounts, OCC will impose an add-on margin charge if, in aggregate, a clearing member deposits a concentrated amount of a particular common stock as margin across all of its accounts.[7] The add-on margin charge will operate to negate the margin credit given to the concentrated margin deposit, and will be collected, when applicable, as part of OCC's standard morning margin process.[8] OCC will assess the add-on margin charge across all of a clearing member's accounts on a pro-rata basis (based on the amount of the particular common stock in each of a clearing member's accounts).

OCC staff has been monitoring concentrated common stock positions, assessing the impact of the proposed change described in this filing and contacting clearing members affected by the proposed change. OCC believes that clearing members will be able to comply with the proposed change without making significant changes to their day-to-day business operations. In December 2013, an information memo was posted to inform all members of the upcoming change. Since January 2014, staff has been in contact with any clearing member that would be affected by the proposed change. On a weekly basis, any clearing member that would see a reduction of 10% or more of its collateral value is contacted and provided an explanation of the policy and a list of concentrated positions observed in this analysis. On a monthly basis, all clearing members exhibiting any concentration risk are contacted to provide an explanation of the proposed policy and a list of concentrated positions. In both cases, clearing members are encouraged to proactively reduce concentrated positions to conform to the proposed policy. As of June 2014, twenty-five members would be affected. Implementation of the Interpretation would result in disallowing $1.2 billion in collateral value and result in margin calls for six members totaling $710 million. Moreover, in July 2014, OCC made an automated report concerning concentrated margin deposits of common stock available to all clearing members.

Wrong-Way Risk

OCC is also proposing to use the Interpretation to address the risk that the common stock a clearing member has deposited as margin and which is issued by the clearing member itself or an affiliate of the clearing member will lose value in the event the clearing member providing such margin defaults, which is known as ''wrong-way risk.'' Wrong-way risk occurs when a clearing member makes a deposit of common stock issued by it or an affiliate and, in the event the clearing member defaults, the clearing member's common stock margin deposit will also be losing value at the same time because there is likely to be a strong correlation between the clearing member's creditworthiness and the value of such common stock. In order to address wrong-way risk, the Interpretation will implement automated systems that will not give margin credit to a clearing member that deposits common stock issued by such clearing member or an affiliate as margin collateral. OCC proposes to define ''affiliate'' broadly in the Interpretation to include any entity with direct or indirect equity ownership of 10% of the clearing member, or any entity for which the clearing member holds 10% of the direct or indirect equity ownership.[9]

OCC has addressed the impact of the change designed to address wrong-way risk. As of June 2014, there were 73 clearing members whose parent or an affiliate has issued securities trading on U.S. exchanges. There are six clearing members that would be affected by virtue of having made margin deposits of their own or an affiliate's common stock. In total, these shares equaled $132 million and accounted for less than one half of one percent of the total market value of valued securities pledged as margin at OCC. In July 2014, OCC made information available to each clearing member that indicates which of its deposits of common stock would not receive margin credit due to wrong-way risk considerations, as described above.[10]

Deposits That Hedge Open Positions

In addition to the above, OCC also proposes to include language in the Interpretation so that it has discretion to give margin credit to common stock deposited as margin that would otherwise not be given margin credit in circumstances when such common stock acts as a hedge (i.e., the member holds an equivalent short position in cleared contracts on the same underlying security). This condition will be checked in both the account and clearing member level. For example, if a clearing member deposits the common stock of an affiliate as margin collateral, which, pursuant to the above, would ordinarily not be given value for the purposes of granting margin credit, OCC may nevertheless give value to such common stock for the purposes of granting margin credit to the extent such common stock acts as a hedge against open positions of the clearing member. In this case, a decline in the value of the margin deposit would be wholly or partially offset by an increase in the value in the open position. Moreover, in such a situation, OCC will systematically limit the margin credit granted to the lesser of a multiple of the daily trading volume or the ''delta equivalent position''[11] for the particular

[7] OCC believes that this policy is consistent with proposed Rule 17Ad–22(e)(5), which requires covered clearing agencies to set and enforce concentration limits to manage its or its participant's credit exposure. *See* 79 FR 16866, 16972 (March 26, 2014).

[8] Since the 2-day limit is first checked at each account, it is possible that a clearing member with multiple accounts may have more than 2-days of a given common stock on deposit in aggregate. To control this condition, a final check is done on the aggregate amount of shares held by a clearing member across all of its accounts. For example, if a particular clearing member has three accounts each holding 2-days volume of a specific common stock, the clearing member check would identify that the member was holding six days of volume in aggregate. To mitigate this risk, an add-on charge equal to the market value of four days of volume would be applied to all accounts holding that security on a pro-rata basis.

[9] This standard is based on the provisions of OCC Rule 215(a)(5).

[10] OCC believes that by providing such information clearing members will be better able to adjust their margin deposits at OCC to conform to the proposed change once it is approved.

[11] The ''delta equivalent position'' is the equivalent number of underlying shares represented by the aggregation of cleared products on that same

Continued

common stock, taking into account the hedging position.[12] OCC believes that this policy will further encourage clearing members to deposit margin collateral that hedges their related open positions and is in line with the valuation methods within STANS. This policy will also facilitate OCC's management of its and its participants' credit exposure [13] as well as the liquidation of a clearing member's portfolio should the need arise.

Other Proposed Changes

OCC is also proposing to make certain clarifying changes in order to accommodate the adoption of the Interpretation into its Rules. Primarily, OCC proposes to add language to OCC Rule 604, Interpretation and Policy .14, to clarify that such Interpretation and Policy concerns OCC's authority to not give value to certain margin deposits for all clearing members (whereas the Interpretation applies to particular clearing member(s)). In addition, OCC proposes to remove language from OCC Rule 604, Interpretation and Policy .14, to improve readability as well as to remove ''factors'' concerning number of shares and affiliates since OCC's authority with respect to such factors will be more clearly described in the Interpretation. Finally, OCC proposes to renumber the Interpretations and Policies of Rule 604 in order to accommodate the adoption of the Interpretation.

underlying instrument. This value is calculated using the ''delta'' of the option or futures contract, which is the ratio between the theoretical change in the price of the options or futures contract to the corresponding change in the price of an underlying asset. Thus, delta measures the sensitivity of an options or futures contract price to changes in the price of the underlying asset. For example, a delta of +0.7 means that for every $1 increase in the price of the underlying stock, the price of a call option will increase by $0.70. Delta for an option or future can be expressed in shares of the underlying asset. For example, a standard put option with a delta of −.45 would have a delta of −45 shares, because the unit of trading is 100 shares.

[12] Assume, for example, an average daily trade volume of 250 shares, a threshold of 2 times the average daily trade volume, and a delta of −300 shares for the options on a particular security in a particular account. A position of 700 shares that did not hedge any short options or futures would receive credit for only 500 shares (*i.e.,* 2 times the average daily trade volume). If the net long position in the account, when combined with the delta of short option and futures position, were only 400, credit would be given for the entire 700 shares since the delta equivalent position is below the 500 share threshold. However, if the option delta were +300, the net long position would be 1000, and credit would only be given for 500 shares because the delta equivalent position would exceed the 500 share threshold.

[13] OCC also believes that this policy is consistent with proposed Rule 17Ad–22(e)(5). *See* Fn. 6, supra.

2. Statutory Basis

OCC believes that the proposed change to OCC's Rules is consistent with Section 805(b) of the Clearing Supervision Act [14] because the proposed change will reduce systemic risk.[15] OCC believes that the proposed changes to its margin policy, as described above, will reduce the risk that clearing member margin assets would be insufficient should OCC need to use such assets to close-out positions of a defaulted clearing member. For the same reasons, the proposed change will reduce systemic risk because it will promote confidence that OCC will be able to timely meet its settlement obligations because the proposed change will diminish the likelihood that a large percentage of a defaulting clearing member's margin assets would not be available to OCC in the event of a clearing member default. The proposed change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended or any advance notice filings pending with the Commission.

(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

(C) Advance Notices Filed Pursuant to Section 806(e) of the Clearing Supervision Act

The proposed change would provide OCC with additional discretion with respect to giving value to clearing member deposits of margin collateral. OCC is filing this advance notice pursuant to Section 806(e)(1) of the Clearing Supervision Act [16] because the change could be deemed to materially affect the nature or level of risks presented by OCC.

As described above in Paragraph II.A, OCC proposes to add the Interpretation so that it has discretion to not give value to concentrated equity security margin deposits and deposits of margin collateral that present wrong-way risk to OCC. In addition, the Interpretation will provide OCC with discretion to give value to securities deposited as margin that would otherwise not be given margin credit in circumstances when such securities act as a hedge against open positions held in the same account. Paragraph II.A also discusses how OCC presently intends to exercise such discretion through the implementation of automated systems and additional internal policies. This proposed change will facilitate OCC's liquidation of a clearing member's margin collateral should such clearing member default and thereby promote robust risk management, safety and soundness and reduce systemic risk because the proposed change will increase the likelihood that OCC will maintain uninterrupted operations notwithstanding the clearing member default. Accordingly, OCC believes that these changes will reduce risks to OCC and its participants.

[14] 12 U.S.C. 5464(b).

[15] 12 U.S.C. 5464(b)(3).

[16] 12 U.S.C. 5465(e)(1).

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The designated clearing agency may implement this change if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission receives the notice of proposed change, or (ii) the date the Commission receives any further information it requests for consideration of the notice. The designated clearing agency shall not implement this change if the Commission has an objection.

The Commission may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Commission providing the designated clearing agency with prompt written notice of the extension. The designated clearing agency may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.

The designated clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[17] OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. *See supra* note 3.

arguments concerning the foregoing. 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–2014–803 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–2014–803. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 OCC and on OCC's Web site (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_803.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–2014–803 and should be submitted on or before September 5, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19330 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72807; File No. SR–Phlx–2014–52]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate Program

August 11, 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 August 1, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Customer Rebate Program in Section B of the Pricing Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the ''Customer Rebate Program,'' in Section B of the Pricing Schedule to provide that the Category B rebate will not be paid when an electronically-delivered Customer Complex Order[3] executes against another electronically-delivered Customer Complex Order. The Exchange believes that Customer Complex Order to Customer Complex Order transactions are rare and no longer believes that offering rebates pursuant to Section B for this scenario is necessary to attract Customer Complex Orders to the Exchange.

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pays Customer rebates on two Categories, A[4] and B,[5] of transactions.[6] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, exclude volume associated with electronic Qualified Contingent Cross (''QCC'') Orders,[7] as defined in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of $0.14 per contract.

[5] Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of $0.17 per contract.

[6] *See* Section B of the Pricing Schedule.

[7] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249

Continued

Exchange Rule 1080(o).[8] The Exchange pays the following rebates: [9]

Customer rebate tiers	Percentage thresholds of national customer volume in Multiply-Listed Equity and ETF options Classes, excluding SPY options (monthly)	Category A	Category B
Tier 1	0.00%–0.60%	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	*0.10	*0.17
Tier 3	Above 1.10%–1.60%	*0.12	*0.17
Tier 4	Above 1.60%–2.50%	0.16	0.19
Tier 5	Above 2.50%	0.17	0.19

Today, the Exchange pays Category B rebates to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. The Exchange proposes to exclude electronically-delivered Customer Complex Orders that execute against another electronically-delivered Customer Complex Orders from the Category B rebates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to not pay a Category B rebate when an electronically-delivered Customer Complex Order executes against another electronically-delivered Customer Complex Order is reasonable because the Exchange does not believe it is necessary to pay rebates on Customer orders in the above scenario to attract Customer Complex Orders to the Exchange for execution. Further, the instances of electronically-delivered Customer Complex Orders that execute against other electronically-delivered Customer Complex Orders is rare and the Exchange believes it is reasonable to not incur negative revenue scenarios for Complex Orders as would be the case with the above described transaction. Also, the Exchange does not feel that the Customer rebate incentive brings a greater number of Customer orders as a result of this incentive and therefore desires to exclude these types of transactions from the Category B rebate.

The Exchange's proposal to not pay a Category B rebate when an electronically-delivered Customer Complex Order executes against another electronically-delivered Customer Complex Order is equitable and not unfairly discriminatory because no market participant would be entitled to a Category B rebate for these type of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. While market participants will be encouraged to transact a greater number of Customer orders to qualify for a rebate, the Exchange does not believe the current rebate incentivizes a greater number of Customer Complex Orders executing against other electronically-delivered Customer Complex Orders on Phlx. The Exchange's proposal to not pay a Category B rebate on Customer Complex Orders executing against other electronically-delivered Customer Complex Orders will not impose an undue burden on competition because no market participant would be entitled to a Category B rebate for these type of transactions.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

(April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[8] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

[9] SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–52, and should be submitted on or before September 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

[13] 17 CFR 200.30–3(a)(12).

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–19334 Filed 8–14–14; 8:45 am]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a summary of their testimony, by Wednesday, September 17, 2014. Written comments are also due by Wednesday, September 17, 2014. A hearing will be held in Washington, DC, on Wednesday, October 1, 2014.

ADDRESSES: Notifications of intent to testify and written comments should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Yvonne Jamison at (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, at (202) 395–3900, or Philip D. Chen, Chief Counsel for China Enforcement, at (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (*http://www.ustr.gov/sites/default/files/2013-Report-to-Congress-China-WTO-Compliance.pdf*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/china/WTOAccessionPackageNEW.html,* or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the United States' view that China should be held accountable as a full participant in, and beneficiary of, the international trading system, USTR requests that interested persons specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than Wednesday, September 17, 2014.

A hearing will be held on Wednesday, October 1, 2014, in Room 1, 1724 F

Street NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify orally at the hearing must provide written notification of their intention by Wednesday, September 17, 2014. The intent to testify notification must be made in the ''Type Comment'' field under docket number USTR–2014–0015 on the regulations.gov Web site and should include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the ''Upload File'' field. The name of the file should also include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''China's WTO Compliance.''

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2014–0015 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted above, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Yvonne Jamison in advance of transmitting the comments. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.*

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2014–19310 Filed 8–14–14; 8:45 am]

BILLING CODE 3290–F4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), the Office of the United States Trade Representative (USTR) is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested persons to submit comments to assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the NTE. The TPSC invites written comments from the public on issues that USTR should examine in preparing the NTE.

In recent years in conjunction with the NTE report, USTR has released two additional reports dealing with specific trade barriers—one on sanitary and phytosanitary measures and one on standards-related measures. In 2015, USTR will continue to emphasize these two important areas, but is inviting comments on those barriers through this notice.

DATES: Public comments are due not later than 11:59 p.m., October 29, 2014.

ADDRESSES: Submissions should be made via the Internet at *www.regulations.gov* docket number USTR–2014–0014. For alternatives to on-line submissions please contact Yvonne Jamison (202–395–3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NTE or on submitting comments in response to this notice should be directed to Yvonne Jamison at (202) 395–3475.

SUPPLEMENTARY INFORMATION: The NTE sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services, U.S. foreign direct investment, and protection of intellectual property rights. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. The 2014 NTE Report may be found on USTR's Internet Home Page (*http://www.ustr.gov*) under the tab ''Reports''. To ensure compliance with the NTE's statutory mandate and the Obama Administration's commitment to focus on the most significant foreign trade barriers, USTR will be guided by the existence of active private sector interest in deciding which restrictions to include in the NTE.

Topics on which the TPSC Seeks Information: To assist USTR in preparing the NTE, commenters should submit information related to one or more of the following categories of foreign trade barriers:

(1) Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) Government procurement restrictions (e.g., ''buy national policies'' and closed bidding);

(3) Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(4) Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(5) Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals);

(6) Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties);

(7) Government-tolerated anticompetitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country's markets;

(8) Trade restrictions affecting electronic commerce (e.g., tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation);

(9) Trade restrictions implemented through unwarranted Sanitary and Phytosanitary Measures, including unwarranted measures justified for purposes of protecting food safety, and animal and plant life or health;

(10) Trade restrictions implemented through unwarranted standards, conformity assessment procedures, or technical regulations (Technical Barriers to Trade) that may have as their objective protecting national security requirements, preventing deceptive practices, or protecting human health or safety, animal or plant life or health, or the environment, but that can be formulated or implemented in ways that create significant barriers to trade; and

(11) Other barriers (e.g., barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

In recent years in conjunction with the NTE report, USTR has released two additional reports dealing with specific trade barriers—one on sanitary and phytosanitary measures and one on standards-related measures. In 2015 USTR will continue to emphasize these two important areas, but is inviting comments on those barriers through this notice set out in items 9 and 10 above.

In addition, commenters are invited to identify those barriers covered in submissions that may operate as ''localization barriers to trade''. Localization barriers are measures designed to protect, favor, or stimulate domestic industries, services providers, and or intellectual property at the expense of goods services or intellectual property from other countries. For more information on localization barriers, please go to *http://www.ustr.gov/trade-topics/localization-barriers.*

In responding to this notice, commenters should place particular emphasis on any practices that may violate U.S. trade agreements. The TPSC is also interested in receiving new or updated information pertinent to the barriers covered in the 2014 NTE as well as information on new barriers. If USTR does not include in the NTE information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Estimate of Increase in Exports: Each comment should include an estimate of the potential increase in U.S. exports that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Estimates should be expressed within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. These estimates will help USTR conduct comparative analyses of a barrier's effect over a range of industries.

Requirements for Submissions: Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country. As indicated above comments addressing SPS measures or technical barriers to trade should be submitted in response to this request. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site.

Comments should be submitted under docket number USTR–2014–0014. Persons submitting comments must do so in English and must identify (on the first page of the submission) ''Comments Regarding Foreign Trade Barriers To U.S. Exports for 2015 Reporting.''

In order to be assured of consideration, comments should be submitted by 11:59 p.m., October 29, 2014. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov* enter docket number USTR–2014–0014 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, please identify the name of the country to which the submission pertains in the ''Type Comment'' field. For example: ''See attached comments with respect to (name of country)''. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather include any information that might appear in a cover letter in the comments themselves. Similarly to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Ms. Jamison in advance of

transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.* Comments will be placed in the docket and open to public inspection, except confidential business information. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2014–19313 Filed 8–14–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–49]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 4, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0474 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 11, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: No. FAA–2014–0474.

Petitioner: Amazon.com.

Section of 14 CFR: 21.191(a), 45.23(b) 91.9(b), 91.203(a) and (b).

Description of Relief Sought: Petitioner seeks an exemption to conduct private, non-commercial small unmanned aircraft systems (sUAS) operations on its own property. Amazon.com is seeking the relief so that it can conduct additional research and development for Prime Air, which is Amazon's new delivery system that will get packages to customers in 30 minutes or less using aerial vehicles.

[FR Doc. 2014–19327 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0081; Notice 2]

General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition.

SUMMARY: General Motors, LLC (GM) has determined that certain model year 2013 Cadillac XTS passenger cars do not fully comply with paragraph S9.1.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* GM has filed an appropriate report dated May 16, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Mike Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. GM's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on November 1, 2013 in the **Federal Register** (78 FR 65761). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2013–0081.''

II. Vehicles Involved: Affected are approximately 24,139 model year 2013 Cadillac XTS passenger cars manufactured from February 2, 2012 to May 2, 2013.

III. Noncompliance: GM has determined that the turn signal in the subject vehicles does not fully comply with paragraph S9.1.1 of FMVSS No. 108, which requires an active turn signal to cancel when the steering wheel is rotated. On some of the vehicles, the turn signal may occasionally not self-cancel by steering wheel rotation. The turn signal can be cancelled manually.

IV. Rule Text: Paragraph S9.1.1 of FMVSS No. 108 specifically states:

> S9.1 Turn signal operating unit.
>
> S9.1.1 The turn signal operating unit installed on passenger cars, multipurpose passenger vehicles, trucks, and buses less than 2032 mm in overall width must be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control.

V. Summary of GM's Analyses: GM stated its belief that the subject noncompliance is inconsequential to

motor vehicle safety for the following reasons:

This condition is inconsequential to motor vehicle safety for the following reasons:

1. Manual operation of the turn signal is unaffected. The driver can manually cancel the turn signal in the rare event the self-cancelling feature does not work.

2. If the turn signal does not self-cancel, the driver is alerted to the fact that the turn signal remains on through multiple means:

a. The turn signal telltale continues to flash;

b. The audible turn signal indicator persists as long as the turn signal is active;

c. The redundant turn signals (mounted on the outer edge of both outboard mirrors) that are visible to the driver continue to flash as long as the turn signal is active;

d. After traveling ¾ of a mile with the turn signal active, a Driver Information Center message, ''TURN SIGNAL ON,'' is displayed indicating a turn signal has been left on; and

e. The DIC message is accompanied by a single chime to alert the driver to the DIC message indicating the turn signal is still active.

3. GM records as of the week of 13 May 2013 indicate the condition declares itself early and is nearly always repaired within the first few months of service.

a. GM does not have a specific labor code for the subject condition. Through a search of all possibly related labor codes, GM found nineteen repairs that might possibly be associated with subject condition. Even conservatively including all nineteen repairs as related to the subject condition, the resulting warranty rate is projected very low at 1.8 IPTV in 36 Month in Service.

b. Of the nineteen repairs, five were repaired prior to customer delivery and nine were repaired in the first 2 months in service.

4. NHTSA has previously granted petitions for inconsequential that are similar to the subject noncompliance.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 108.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: We have concluded that the vehicle, in addition to the required telltales, will alert the driver through multiple and persistent means when the turn signal is still active, and that the driver will be able to cancel the turn signal by using a manually operated control.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that GM has met its burden of persuasion that the FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby granted and GM is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–19303 Filed 8–14–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35724 (Sub-No. 1)]

California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare, and Kern Counties, Cal

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of construction exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for the California High-Speed Rail Authority (Authority) to construct an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, California (the Line). The Line would be the second section of the statewide California High-Speed Train System. This exemption is subject to environmental mitigation conditions and the condition that the Authority build the route designated as environmentally preferable.

DATES: The exemption will be effective on August 27, 2014; petitions to reopen must be filed by September 2, 2014.

ADDRESSES: An original and ten copies of all pleadings, referring to Docket No. FD 35724 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be served on the Authority's representative: Linda J. Morgan, Nossaman LLP, 1666 K Street NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245–0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339].

Copies of written filings will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: August 11, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Vice Chairman Miller concurred with a separate expression and Commissioner Begeman dissented with a separate expression.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–19431 Filed 8–14–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 12, 2014.

The Department of the Treasury will submit the following information

collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 15, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1800.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8886, Reportable Transaction Disclosure Statement; Form 14234, Pre-CAP and CAP Application Form.

Form: Form 8886, Form 14234.

Abstract: Form 8886 is used to disclose information for each reportable transaction in which a taxpayer participated, as described in 26 CFR 1.6011–4. Form 14234 is the application for the Compliance Assurance Process (CAP), a strictly voluntary program available to Large Business and International (LB&I) Division taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 90 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 913,698.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–19354 Filed 8–14–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0594]

Proposed Information Collection (Election To Apply Selected Reserve Services to Either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine the type of educational benefit payable to Selected Reservist members.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 14, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0594'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Election to Apply Selected Reserve Services to Either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve.

OMB Control Number: 2900–0594.

Type of Review: Extension of a previously approved collection.

Abstract: Reservist who participant in the Montgomery GI Bill-Active Duty and served on active duty for two years followed by six years in the Selected Reserve must elect to apply the selected reserved credit either toward the Montgomery GI Bill-Active Duty or toward the Montgomery GI Bill-Selected Reserve benefits. Reservists must make this election in writing, which will take effect when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. VA uses the election to determine which benefit is payable based on the individual's Selected Reserve service.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,667 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,000.

Dated: August 12, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–19407 Filed 8–14–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0778]

Proposed Information Collection (Disability Benefits Questionnaires—Group 3) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain medical evidence to adjudicate a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 14, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0778'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Central Nervous System and Neuromusculo Diseases, Disability Benefits Questionnaire, VA Form 21–0960C–5.

b. Headaches (Including Migraine Headaches), Disability Benefits Questionnaire, VA Form 21–0960C–8.

c. Multiple Sclerosis (MS), Disability Benefits Questionnaire, VA Form 21–0960C–9.

d. Esophageal Disorders (Including GERD), Hiatal Hernia and Other Esophageal Disorders Disability Benefits Questionnaire, VA Form 21–0960G–1.

e. Gallbladder and Pancreas Conditions, Disability Benefits Questionnaire, VA Form 21–0960G–2.

f. Intestinal Disorders (Other Than Surgical or Infectious) (Including Irritable Bowel Syndrome, Crohn's Disease, Ulcerative Colitis, and Diverticulitis) Disability Benefits Questionnaire, VA Form 21–0960G–3.

g. Infectious Intestinal Disorders (including Bacterial and Parasitic Infections) Disability Benefits Questionnaire, VA Form 21–0960G–4.

h. Hepatitis, Cirrhosis and Other Liver Conditions, Disability Benefits Questionnaire, VA Form 21–0960G–5.

i. Peritoneal Adhesions Disability Benefits Questionnaire, VA Form 21–0960G–6.

j. Stomach and Duodenal Conditions (Not Including GERD or Esophageal Disorders) Disability Benefits Questionnaire, VA Form 21–0960G–7.

k. Rectum and Anus (Including Hemorrhoids) Disability Benefits Questionnaire, VA Form 21–0960H–2.

l. Breast Conditions and Disorders Disability Benefits Questionnaire, VA Form 21–0960K–1.

m. Gynecological Conditions Disability Benefits Questionnaire, VA Form 21–0960K–2.

n. Sleep Apnea Disability Benefits Questionnaire, VA Form 21–0960L–2.

o. Osteomyelitis Disability Benefits Questionnaire, VA Form 21–0960M–11.

p. Ear Conditions (Including Vestibular and Infectious) Disability Benefits Questionnaire, VA Form 21–0960N–1.

OMB Control Number: 2900–0778.

Type of Review: Revision.

Abstract: Data collected on VA Form 21–0960 series will be used to obtain information from claimants treating physician that is necessary to adjudicate a claim for disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 77,500.

a. VAF 21–0960C–5—5,000.
b. VAF 21–0960C–8—3,750.
c. VAF 21–0960C–9—7,500.
d. VAF 21–0960G–1—10,000.
e. VAF 21–0960G -2—1,250.
f. VAF 21–0960G–3—1,250.
g. VAF 21–0960G–4—1,250.
h. VAF 21–0960G–5—5,000.
i. VAF 21–0960G–6—1,250.
j. VAF 21–0960G–7—2,500.
k. VAF 21–0960G–8—1,250
l. VAF 21–0960H–2—2,500.
m. VAF 21–0960K–1—7,500.
n. VAF 21–0960K–2—10,000.
o. VAF 21–0960L–2—1,250.
p. VAF 21–0960M–11—10,000.
q. VAF 21–0960N–1—6,250.

Estimated Average Burden Per Respondent:

a. VAF 21–0960C–5—30 minutes.
b. VAF 21–0960C–8—15 minutes.
c. VAF 21–0960C–9—45 minutes.
d. VAF 21–0960G–1—15 minutes.
e. VAF 21–0960G -2—15 minutes.
f. VAF 21–0960G–3—15 minutes.
g. VAF 21–0960G–4—15 minutes.
h. VAF 21–0960G–5—30 minutes.
i. VAF 21–0960G–6—15 minutes.
j. VAF 21–0960G–7—15 minutes.
k. VAF 21–0960G–8—15 minutes.
l. VAF 21–0960H–2—15 minutes.
m. VAF 21–0960K–1—15 minutes
n. VAF 21–0960K–2—30 minutes
o. VAF 21–0960L–2—15 minutes.
p. VAF 21–0960M–11—15 minutes.
q. VAF 21–0960N–1—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250,000.

a. VAF 21–0960C–5—10,000.
b. VAF 21–0960C–8—15,000.
c. VAF 21–0960C–9—10,000.
d. VAF 21–0960G–1—40,000.
e. VAF 21–0960G -2—5,000.
f. VAF 21–0960G–3—5,000.
g. VAF 21–0960G–4—5,000.
h. VAF 21–0960G–5—10,000.
i. VAF 21–0960G–6– 5,000.
j. VAF 21–0960G–7– 10,000.
k. VAF 21–0960G–8—5,000.
l. VAF 21–0960H–2—10,000.
m. VAF 21–0960K–1—30,000.
n. VAF 21–0960K–2—20,000.
o. VAF 21–0960L–2—5,000.
p. VAF 21–0960M–11—40,000.
q. VAF 21–0960N–1—25,000.

Dated: August 12, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–19392 Filed 8–14–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 14, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0216'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601.

OMB Control Number: 2900–0216.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected on VA Form 21–601 is use to determine a claimant's entitlement to accrued benefits that was due to a deceased Veteran but not paid prior to the Veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however if there is no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the Veteran's last illness and burial expenses.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,300 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,600.

Dated: August 12, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–19413 Filed 8–14–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on September 3–4, 2014, in Room 530 at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On September 3, the session will begin at 8:30 a.m. and end at 5 p.m. On September 4, the session will begin at 8 a.m. and end at 12 Noon. This meeting is open to the public. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Marcia Holt-Delaney, Program Analyst, Geriatrics and Extended Care Services (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or via email at *Marcia.Holt-Delaney@va.gov.* Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney at (202) 461–6769.

Dated: August 12, 2014.

Rebecca Schiller,

Committee Management Officer.

[FR Doc. 2014–19344 Filed 8–14–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Friday,

No. 158 August 15, 2014

Part II

Environmental Protection Agency

40 CFR Parts 122 and 125

National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 125

[EPA–HQ–OW–2008–0667, FRL–9817–3]

RIN 2040–AE95

National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to reduce impingement and entrainment of fish and other aquatic organisms at cooling water intake structures used by certain existing power generation and manufacturing facilities for the withdrawal of cooling water from waters of the United States. This rule establishes requirements under section 316(b) of the Clean Water Act (CWA) for existing power generating facilities and existing manufacturing and industrial facilities that are designed to withdraw more than 2 million gallons per day (mgd) of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes. These national requirements, which will be implemented through National Pollutant Discharge Elimination System (NPDES) permits, apply to the location, design, construction, and capacity of cooling water intake structures (CWIS) at regulated facilities and provide requirements that reflect the best technology available (BTA) for minimizing adverse environmental impact. On April 20, 2011, EPA published a proposed rule that included several options for addressing these impacts. Subsequently, EPA published two Notices of Data Availability (NODA), on June 11, 2012 and June 12, 2012, that further clarified EPA's proposed approach. This final rule also responds to judicial remand of aspects of the previously promulgated Phase II and Phase III section 316(b) rules. In addition, EPA is also responding to an earlier judicial decision by removing from the previously promulgated Phase I new facility rule a restoration-based compliance alternative and the associated monitoring and demonstration requirements.

DATES: This regulation is effective October 14, 2014. For judicial review purposes, this final rule is promulgated as of 1 p.m. EDT (Eastern Daylight Time) on August 29, 2014 as provided in 40 CFR 23.2.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2008–0667. 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., CBI (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 hardcopy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hardcopy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue 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 Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For additional biological information, contact Tom Born at 202–566–1001; email: *born.tom@epa.gov*. For additional economic information, contact Wendy Hoffman at 202–564–8794; email: *hoffman.wendy@epa.gov*. For additional technical information, contact Paul Shriner at 202–566–1076; email: *shriner.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

What facilities are regulated by this action?

This final rule applies to existing facilities that use cooling water intake structures to withdraw water from waters of the United States and have or require an NPDES (National Pollutant Discharge Elimination System) permit issued under section 402 of the CWA (Clean Water Act). Existing facilities subject to this regulation include those with a design intake flow (DIF) greater than 2 mgd. If a facility meets these conditions, it is subject to today's final regulations. If a facility has or requires an NPDES permit but does not meet the 2 mgd intake flow threshold, it is subject to permit conditions implementing CWA section 316(b), developed by the NPDES Permit Director on a case-by-case basis using BPJ (best professional judgment) under 40 CFR 125.90(b). This final rule defines the term *cooling water intake structure* to mean the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. The cooling water intake structure extends from the point at which water is first withdrawn from waters of the United States source up to, and including, the intake pumps. Generally, facilities that meet these criteria fall into two major groups: steam electric generating facilities and manufacturing facilities. The final rule also makes limited changes to the requirements for Phase I facilities (i.e., new facilities).

Exhibit 1 lists industry sectors of facilities subject to this final rule. This table is not intended to be exhaustive; facilities in other industries not listed in Exhibit 1 could also be regulated. The 4-digit NAICS industry sectors may include 6-digit NAICS industry sub-sectors with operations that are not dependent on cooling water.

EXHIBIT 1—INDUSTRY SECTORS WITH FACILITIES SUBJECT TO THE FINAL RULE

Category	4-Digit NAICS industry sectors	NAICS definition
Federal, State and Local Government	Electric Power Industry	
	2211	Electric Power Generation, Transmission and Distribution.
Industry	Electric Power Industry	
	2211	Electric Power Generation, Transmission and Distribution.
Industry	Primary Manufacturing Industries	
	3112	Grain and Oilseed Milling.
	3113	Sugar and Confectionery Product Manufacturing.
	3121	Beverage Manufacturing.
	3221	Pulp, Paper, and Paperboard Mills.
	3222	Converted Paper Product Manufacturing.
	3241	Petroleum and Coal Products Manufacturing.
	3251	Basic Chemical Manufacturing.
	3252	Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing.
	3253	Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing.
	3254	Pharmaceutical and Medicine Manufacturing.
	3256	Soap, Cleaning Compound, and Toilet Preparation Manufacturing.
	3259	Other Chemical Product and Preparation Manufacturing.
	3311	Iron and Steel Mills and Ferroalloy Manufacturing.
	3312	Steel Product Manufacturing from Purchased Steel.
	3313	Alumina and Aluminum Production and Processing.
Industry	Other Industries	
	1119	Other Crop Farming.
	2122	Metal Ore Mining.
	3133	Textile and Fabric Finishing and Fabric Coating Mills.
	3211	Sawmills and Wood Preservation.
	3314	Nonferrous Metal (except Aluminum) Production and Processing.
	3322	Cutlery and Handtool Manufacturing.
	3329	Other Fabricated Metal Product Manufacturing.
	3364	Aerospace Product and Parts Manufacturing.
	3391	Medical Equipment and Supplies Manufacturing.

To determine whether a facility could be regulated by this action, one should carefully examine the applicability criteria in § 125.91 of the final rule. For information regarding the applicability of this action to an entity, consult the persons listed for technical information in **FOR FURTHER INFORMATION CONTACT**.

Supporting Documentation

1. Docket

EPA has established an official public docket for this action under Docket ID EPA–HQ–OW–2008–0667. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include information claimed as Confidential Business Information (CBI) or other information, the disclosure of which, is restricted by statute. For information on how to access materials in the docket, see **ADDRESSES** above. To view docket materials, call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket Center may charge $0.15 for each page over the 266-page limit, plus an administrative fee of $25.00.

2. Electronic Access

You may access this **Federal Register** document and the docket electronically through the Web site *http://www.regulations.gov* by searching for Docket ID EPA–HQ–OW–2008–0667. For additional information about the public docket, visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm*.

3. Technical Support Documents

The final regulation is supported by three major documents:

- Economic Analysis for the Final Section 316(b) Existing Facilities Rule (EPA–821–R–14–001), referred to as the EA throughout. This document presents the analysis of compliance costs, economic impacts, energy supply effects, and a summary of benefits associated with the final rule.
- Benefits Analysis for the Final Section 316(b) Existing Facilities Rule (EPA–821–R–14–005), referred to as the BA throughout. This document examines cooling water intake structure impacts and regulatory benefits at the regional and national levels.
- Technical Development Document for the Final Section 316(b) Existing Facilities Rule (EPA–821–R–14–002), referred to as the TDD throughout. This document presents detailed information on the methods used to develop unit costs and describes the set of technologies that may be used to meet the final rule requirements.

Table of Contents

I. Executive Summary and Scope of Today's Rulemaking
A. Executive Summary
B. Scope of Today's Rulemaking
C. General Applicability

D. What is an ''existing facility'' for purposes of the final rule?
E. What is ''cooling water'' and what is a ''cooling water intake structure?''
F. Would my facility be covered only if it is a point source discharger?
G. Would my facility be covered if it withdraws water from waters of the united states? What if my facility obtains cooling water from an independent supplier?
H. What intake flow thresholds result in an existing facility being subject to the final rule?
I. What are the requirements for existing offshore oil and gas facilities, offshore seafood processing facilities or LNG terminals BTA requirements under the final rule?
J. What is a ''new unit'' and how are new units addressed under the final rule?
K. Amendments related to the phase I rule
II. Legal Authority for and Background of the Final Regulation
A. Legal Authority
B. Purpose of the Regulation
C. Background
III. Environmental Effects Associated With Cooling Water Intake Structures
A. Introduction
B. Major Anthropogenic Stressors in Aquatic Ecosystems
C. Effects of CWIS on Aquatic Ecosystems
D. Community—Level or Indirect Effects of CWIS
E. Cumulative Effects of Multiple Facilities
IV. Summary Description of the Final Rule
A. BTA Standard for Impingement Mortality for Existing Units at Existing Facilities
B. BTA Standard for Entrainment for Existing Units at Existing Facilities
C. BTA Standard for Impingement Mortality and Entrainment for New Units at Existing Facilities
D. Other Provisions
V. Summary of Data Updates and Revisions to the Proposed Rule
A. Data Updates
B. Regulatory Approach and Compliance
C. New Units
VI. Basis for the Final Regulation
A. EPA's Approach to BTA
B. Overview of Final Rule Requirements
C. Technologies Considered To Minimize Impingement and Entrainment
D. Technology Basis for Today's Final Rule
E. Option Selection
F. Other Options Considered for Today's Final Regulation
G. Final Rule BTA Performance Standards
H. Economic and Benefit Analysis for the Final Rule
I. Site-Specific Consideration of Entrainment Controls
VII. Response to Major Comments on the Proposed Rule and Notices of Data Availability (NODAs)
A. Scope and Applicability
B. Proposed Amendments Related to Phase I Rule
C. Environmental Impact Associated With Cooling Water Intake Structures
D. EPA's Approach to BTA
E. BTA Performance Standards
F. Implementation
G. Costs
H. Monitoring and Reporting
I. Endangered Species Act
VIII. Implementation
A. When does the final rule become effective and how are the requirements sequenced in an orderly way?
B. How does the final rule reduce biological monitoring requirements?
C. What information will I be required to submit to the director when I apply for my NPDES permit?
D. When are permit application studies due?
E. How will the director determine the best technology available for minimizing adverse environmental impacts?
F. What are example permit conditions and compliance monitoring for impingement mortality?
G. What monitoring is required for entrainment?
H. What reports am I required to submit?
I. What records will I be required to keep?
J. What are the respective Federal, State, and Tribal roles?
K. Protection of Endangered and Threatened Species and Designated Critical Habitat
L. Permits for Existing Facilities are Subject to Requirements under Other Federal Statutes
IX. Cost Development and Economic Impact Analysis
A. Overview of Costs to Regulated Facilities and Federal and State Governments
B. Development of Compliance Costs
C. Social Costs
D. Economic Impacts
E. Employment Effects
X. Benefits Analysis
A. Introduction
B. Regional Study Design
C. Physical Impacts of Impingement Mortality and Entrainment
D. National Benefits of the Final Rule and Options Considered
XI. Related Acts of Congress, Executive Orders, and Agency Initiatives
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
K. Executive Order 13158: Marine Protected Areas
L. Congressional Review Act

I. Executive Summary and Scope of Today's Rulemaking

A. Executive Summary

1. Summary of the Major Provisions of the Regulatory Action

This rule establishes requirements under section 316(b) of the Clean Water Act (CWA) for existing power generating facilities and existing manufacturing and industrial facilities that withdraw more than 2 million gallons per day (mgd) of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes. These national requirements, which will be implemented through National Pollutant Discharge Elimination System (NPDES) permits, apply to the location, design, construction, and capacity of cooling water intake structures (CWIS) at regulated facilities by setting requirements that reflect the best technology available (BTA) for minimizing adverse environmental impact.[1] On April 20, 2011, EPA published a proposed rule that included several options for addressing these impacts. EPA published two Notices of Data Availability (NODA), on June 11, 2012 and June 12, 2012, that further clarified EPA's approach. This final rule constitutes EPA's response to the remand of the Phase II and Phase III rules. In addition, EPA is also responding to the decision in *Riverkeeper I* to remove from the Phase I new facility rule the restoration-based compliance alternative and the associated monitoring and demonstration requirements.

2. Need for the Rule

Cooling water is withdrawn for the purpose of dissipating waste heat from industrial processes. Over half of all water withdrawn in the United States each year is for cooling purposes. By far, the largest industrial use of cooling water is for thermoelectric generation, but cooling water is also used in the manufacture of aluminum, chemicals and allied products, food and kindred products, pulp and paper, refined petroleum products, and steel, as well as in other industries. Although newer designs are more efficient, the long life of the capital equipment in these industries suggests that the adverse environmental impacts could continue for decades. Electric generators, for

[1] As noted here, the term BTA means ''best technology available for minimizing adverse environmental impact.'' In the interests of brevity, the acronym will frequently be used in the preamble to reflect the entire definition.

example, typically convert 30 to 40 percent of the heat content of their fuel to electricity, depending on their fuel source, age of their facility, and capacity utilization (see TDD 5.1). The purpose of cooling water withdrawals is to dissipate that portion of the heat that is a by-product of industrial processes that facilities have not used and therefore view as waste heat.

The withdrawal of cooling water by existing facilities removes and kills hundreds of billions of aquatic organisms from waters of the United States each year, including plankton (small aquatic animals, including fish eggs and larvae), fish, crustaceans, shellfish, sea turtles, marine mammals, and many other forms of aquatic life. Most impacts are to early life stages of fish and shellfish. Aquatic organisms drawn into CWIS are either impinged (I) on components of the intake structure or entrained (E) in the cooling water system itself. In CWA section 316(b) and in this rulemaking, these impacts are referred to as *adverse environmental impact* (AEI). Rates of I&E depend on species characteristics, the facility's environmental setting, and the location, design, construction and capacity of the facility's CWIS. In addition to direct losses of aquatic organisms from I&E, a number of indirect, ecosystem-level effects may also occur, including (1) disruption of aquatic food webs resulting from the loss of impinged and entrained organisms that provide food for other species, (2) disruption of nutrient cycling and other biochemical processes, (3) alteration of species composition and overall levels of biodiversity, and (4) degradation of the overall aquatic environment. In addition to the impacts of a single CWIS on currents and other local habitat features, environmental degradation can result from the cumulative impact of multiple intake structures operating in the same watershed or intakes located within an area where intake effects interact with other environmental stressors. Finally, although it is difficult to measure, the compensatory ability of an aquatic population, which is the capacity for a species to increase survival, growth, or reproduction rates in response to decreased population, is likely compromised by I&E and the cumulative impact of other stressors in the environment over extended periods of time.

The beneficiaries of fish protection at cooling water intakes include fisherman, both recreational and commercial, and people interested in well-functioning and healthy aquatic ecosystems. While most people consume electricity, they consume electricity in differing amounts, and may not be uniformly interested in, or willing to pay for, fish protection. Thus, there is imperfect overlap between those who could be required to pay for fish protection and those who would benefit from fish protection. Those who desire more fish protection have extremely limited opportunities in which they can express their willingness to pay for fish protection in market transactions that result in fish protection. In addition, deregulation in the electric industry has made it more difficult for merchant power producers to both remain competitive and pass along to consumers costs associated with fish protection, relative to rate-regulated electric utilities that are vertically integrated.

Fish protection at cooling water intakes is also variable, based on species and their migrations, waterbody, size of a cooling water intake, presence of multiple facilities on a waterbody, and many more variables that are highly site specific. In addition, given the history of litigation around this section of the Clean Water Act, states have, in some instances, administratively continued permits while awaiting final Federal action, and thus fish protection has been delayed, in some instances for decades.

Promulgation of today's final rule will complete EPA's regulations under section 316(b) of the Clean Water Act. This rule includes a national performance standard as the BTA to address impingement mortality (IM) at existing CWIS. This national standard for impingement reflects EPA's assessment that impingement reduction technology is available, feasible and demonstrated, and thus BTA for existing facilities. The impingement mortality standard is based on modified traveling screens with fish returns and includes a performance standard as one compliance alternative, but also offers six other compliance alternatives that are equivalent or better in performance. With regard to entrainment, this rule contains a national BTA standard that is a process for a site-specific determination of entrainment mitigation requirements at existing CWIS. The entrainment provision reflects EPA's assessment that there is no single technology basis that is BTA for entrainment at existing facilities, but instead a number of factors that are best accounted for on a site-specific basis. Site-specific decision making may lead to a determination by the NPDES permitting authority that entrainment requirements should be based on variable speed pumps, water reuse, fine mesh screens, a closed-cycle recirculating system, or some combination of technologies that constitutes BTA for the individual site. The site-specific decision-making may also lead to no additional technologies being required.

In addition to the above provisions, which apply to existing units at existing facilities, the rule establishes a BTA standard, for both impingement mortality and entrainment, for new units at existing facilities. Under this standard, new units at existing facilities will be subject to requirements similar to the section 316(b) requirements for new facilities subject to the previously promulgated Phase I rule.

In addition, there is a need to regulate even those facilities that adopt the most effective technology. Closed-cycle cooling is a technology that recirculates cooling water, reducing withdrawals from surface waters. Closed-cycle cooling can reduce water withdrawals by at least 95 percent, compared to once-through cooling, but is itself capital intensive. Facilities that retrofit to closed-cycle cooling without also modifying their condenser may not be able to operate at full capacity during summer peak periods of electricity demand (replacing the condenser would require longer outages). Operators who retrofit closed-cycle cooling systems have a financial incentive not to run their system in closed-cycle mode during summer months. Thus, decision making at facilities that use cooling water may not take society's preferences for fish protection into account in their actions.

EPA notes that some facilities have installed, and some NPDES permits require, controls that protect aquatic organisms from impingement and entrainment. Facilities may have adopted controls as good stewards. Directors may have required controls to meet state water quality standards, particularly with regard to temperature. Based on our evaluation of available evidence, these actions have not been widespread enough to discourage cooling water withdrawals from waters where they have the greatest impact on aquatic organisms.

3. Costs and Benefits

As presented in Exhibit I–1, EPA assessed the expected costs to society for complying with the final rule, accounting for both the existing CWIS unit provision and the new unit provision, as $275 million and $297 million per year at the 3 percent and 7 percent discount rates, respectively. These costs reflect permit applications, studies, recordkeeping, monitoring, and reporting required by the rule. The costs also include costs of technologies for

complying with the BTA for IM. The cost of additional technologies that may be required to meet the site-specific BTA for entrainment are not included in this analysis because, as explained in Section VII, EPA cannot estimate, with any level of certainty, what site-specific determinations will be made based on the analyses that will be generated as a result of the national BTA standard for entrainment decision-making established by today's rule.

EPA estimates that today's final rule—including standards for both existing units and new units at existing facilities—will achieve monetized benefits to society of $33 million and $29 million annually, again depending on the discount rate. This estimate of benefits omits important categories of benefits that EPA expects the rule will achieve, such as most of the benefits associated with fish other than commercially and recreationally harvested fish. As a result, these estimates are likely to understate substantially the rule's expected benefits to society. In estimating the benefits of today's rule, EPA did not rely on the results of the stated preference survey conducted by the Agency and described in the June 12, 2012 Notice of Data Availability (77 FR 34927 (June 12, 2012)). Included in the monetized benefits is EPA's estimate that the final rule will reduce greenhouse gas (GHG) emissions by 9.3 million tons of CO_2-equivalent emissions over the 40-year compliance period for this analysis. Based on this reduction in GHG emissions, EPA estimates benefits to society (based on social cost of carbon (DCN [2] 12–4853)) ranging from $12 million to $13 million annually (see Section 9 of the BA), depending on the discount rate and other assumptions in the social cost of carbon analysis.

EXHIBIT I–1—TOTAL ANNUALIZED SOCIAL COSTS AND BENEFITS FOR THE FINAL RULE

[in millions, 2011 dollars]

	Existing units	New units	Total
Using 3 percent discount rate:			
Social Costs	$272.4	$2.5	$274.9
Social Benefits	33.0	−0.2	32.8
Using 7 percent discount rate:			
Social Costs	295.3	2.0	297.3
Social Benefits	28.7	−0.1	28.6

EPA expects that the final rule will have relatively minor economic impacts on the regulated facilities, the entities that own them, and the overall electric power sector, which is the industry most affected by today's rule. Under the rule's existing unit provisions, EPA estimates that a substantial majority (86 percent) of electric generators will incur compliance costs of less than 1 percent of revenue, indicating the minor impact of the rule on these facilities.

EPA also expects very small impacts on the non-power sector component of regulated facilities. EPA estimates that 504 out of 509 facilities will incur costs less than one percent of revenue, five will incur costs between one and three percent, and none will incur costs greater than 3 percent. In addition, EPA estimates that no manufacturing facilities will close as a result of today's rule, and that only 12 facilities in the non-power sector component will experience moderate financial stress short of closure. These 12 facilities represent approximately 3 percent of the estimated total regulated facilities in the non-power sector component.

At the level of the entities that own regulated facilities, EPA estimates that 91 to 94 percent of entities owning regulated facilities in the electric power sector will incur compliance costs of less than 1 percent of revenue under the rule's existing unit provisions. Likewise, for the non-power sector component of regulated facilities, EPA estimates that 90 to 95 percent of entities owning regulated facilities will incur compliance costs of less than 1 percent of revenue under the rule's existing unit provisions.

Finally, EPA estimates that today's rule will have a minor impact on the overall electric power sector and electricity consumers. EPA estimates that the rule will not affect national or regional electricity markets on a long-term basis. In addition, EPA expects there to be no effects of the final rule on the reliability of electricity generation, transmission and distribution. In terms of consumer impacts, EPA estimates, on average, across the United States, that the final rule will increase electricity production costs by 0.009 cents per kWh, causing an estimated 0.1 percent increase in average electricity prices. The corresponding annual increase in electricity costs is approximately $1.03 per household.

B. Scope of Today's Rulemaking

Today's final rule represents the last stage in EPA's efforts to implement section 316(b) of the CWA. In the course of their operations, electric power facilities and certain manufacturing facilities use large amounts of water either for cooling purposes or in their manufacturing processes. Such facilities typically remove water from nearby sources using ''cooling water intake structures.'' The structures associated with water removal pose a number of threats to the environment. Principally, aquatic organisms are squashed against intake screens—impingement—or drawn into the cooling system—entrainment. Section 316(b) requires EPA to develop standards for cooling water intakes structures.

Today's final rule establishes national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at existing facilities that reflect the BTA for minimizing the adverse environmental impacts– impingement and entrainment—associated with the use of these structures. It represents the culmination of EPA's efforts to implement section 316(b) and, as such, fulfills EPA's obligation under a settlement agreement entered in the United States District Court for the Southern District of New York in *Riverkeeper Inc., et al.* v. *Jackson,* No. 93 Civ. 0314 (AGS). (For a more detailed discussion of the settlement agreement, see Section II.C.)

This final rule establishes requirements for all existing facilities with a DIF (design intake flow) of more

[2] DCN refers to a document control number. An index of DCNs can be found in the docket for this action.

than 2 mgd. EPA estimates that a total of 1,065 facilities will be subject to the final rule, including 544 Electric Generators, 509 Manufacturers in six Primary Manufacturing Industries, and 12 Manufacturers in Other Industries. The rule also clarifies the definition and requirements for new units at existing facilities. The applicable requirements are summarized in Exhibits I–2 and I–3.

EXHIBIT I–2—APPLICABILITY BY PHASE OF THE 316(B) RULES

Facility characteristic	Applicable rule
New power-generating or manufacturing facility	Phase I rule.
New offshore oil and gas facility	Phase III rule.
New unit at an existing power-generating or manufacturing facility	This rule.
Existing power-generating or manufacturing facility	This rule.
Existing offshore oil and gas facility and offshore seafood processing facilities	This rule (site-specific, BPJ).

EXHIBIT I–3—APPLICABLE REQUIREMENTS OF TODAY'S RULE FOR EXISTING FACILITIES

Facility characteristic	Applicable requirements
Existing facility with a DIF greater than 2 mgd and an AIF (actual intake flow) greater than 125 mgd.	Impingement mortality standards at § 125.94(c) and site-specific entrainment requirements under the entrainment standards at § 125.94(d) (Additional study requirements at § 122.21(r)(1)(ii)(B)).
Existing facility with a DIF greater than 2 mgd but AIF not greater than 125 mgd.	Impingement mortality standards at § 125.94(c) and site-specific entrainment requirements under the entrainment standards at § 125.94(d).
New unit at an existing facility where the facility has a DIF greater than 2 mgd.	Impingement mortality and entrainment standards for new units at § 125.94(e).
Other existing facility with a DIF of 2 mgd or smaller or that has an intake structure that withdraws less than 25 percent of the water for cooling purposes on an actual intake flow basis.	Case-by-case BPJ permitting per § 125.90(b).

At an early stage in the development of section 316(b) requirements, EPA divided its rulemaking effort into three phases. The first addressed new facilities, the second, large existing electricity utility facilities and the third, the remaining electric generating facilities not addressed in the earlier phases as well as existing manufacturing operations. As EPA's analysis progressed, however, it became clear that it could address in one rulemaking cooling water intake structures at both existing steam electric generating and manufacturing facilities. From a biological perspective, the effect of intake structures on impingement and entrainment [3] does not differ depending on whether an intake structure is associated with a power plant or a manufacturer. In 2009, following judicial challenge of the Phase II rule, EPA asked the U.S. Court of Appeals for the Second Circuit to remand the rule to the Agency for further action consistent with a decision by the U.S. Supreme Court in *Entergy Corp.* v. *Riverkeeper, Inc.* and the Second Circuit's decision on the Phase II rule in *Riverkeeper, Inc.* v. *EPA,* 475 F.3d 83 (2d cir. 2007). In 2009, EPA also asked the U.S. Court of Appeals for the Fifth Circuit to remand certain aspects of EPA's Phase III rule that were before it in a petition for review. Today's rule responds to these remands as well to the Second Circuit's remand of limited aspects of the Phase I section 316(b) rule in *Riverkeeper Inc.* v. *Johnson,* 358 F.3d 174 (2nd Cir. 2004). EPA has here consolidated the universe of potentially regulated facilities from the remanded 2004 Phase II rule with the existing facilities in the remanded 2006 Phase III rule for establishing requirements in a single proceeding.

C. General Applicability

This rule applies to owners and operators of existing facilities [4] that meet all following criteria:

- The facility is a point source that uses or, in the case of new units at an existing facility, proposes to use cooling water from one or more cooling water intake structures, including a cooling water intake structure operated by an independent supplier not otherwise subject to 316(b) requirements that withdraws water from waters of the United States and provides cooling water to the facility by any sort of contract or other arrangement;
- The facility-wide DIF for all cooling water intake structures at the facility is greater than 2 mgd;
- The cooling water intake structure withdraws cooling water from waters of the United States; and
- At least 25 percent of the water actually withdrawn—actual intake flow (AIF)—is used exclusively for cooling purposes.

A facility may choose to demonstrate compliance with the final rule for the entire facility, or for each individual cooling water intake structure.

EPA is adopting provisions that promote the reuse of water from certain sources for cooling and that ensure that the rule does not discourage the reuse of cooling water for other uses such as process water. For example, the final rule at § 125.91(c) specifies that obtaining cooling water from a public water system, using reclaimed water from wastewater treatment facilities or desalination plants, or recycling treated process wastewater effluent (such as wastewater treatment plant ''gray'' water) does not constitute use of a cooling water intake structure for purposes of this rule. In addition, the definition of cooling water at § 125.92 provides that cooling water obtained from a public water system, reclaimed water from wastewater treatment facilities or desalination plants, treated effluent from a manufacturing facility, or cooling water that is used in a manufacturing process either before or

[3] Throughout the preamble and support documents, the terms ''entrainment'' and ''entrainment mortality'' may be used interchangeably. As described below, EPA continues to assume that, in most instances, entrainment mortality is 100 percent, leaving little distinction between the two terms.

[4] Throughout the preamble, the terms ''owner or operator of a facility'' and ''facility'' may be used interchangeably. In cases where the preamble may state that a facility is required to do a given activity, it should be interpreted as the owner or operator of the facility is required to do the activity.

after it is used for cooling as process water is not considered cooling water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes. Therefore, water used for both cooling and non-cooling purposes does not count toward the 25 percent threshold. Examples of water withdrawn for non-cooling purposes includes water withdrawn for warming by LNG (liquefied natural gas) facilities and water withdrawn for public water systems by desalinization facilities.

Today's rule focuses on those facilities that are significant users of cooling water. The rule provides that only those facilities that use 25 percent or more of the water withdrawn exclusively for cooling purposes (on an actual intake flow basis) are subject to the rule. EPA previously considered a number of cut-points or approaches for focusing the applicability of the rule (66 FR 28854, May 25, 2001 and 66 FR 65288, December 18, 2001). EPA used the 25 percent threshold in each of the Phase I, II, and III rules. For this rule, EPA did not receive any new data supporting a different threshold or identify new approaches to the applicability of the rule. Consequently, EPA is adopting 25 percent as the threshold for the percent of flow used for cooling purposes to ensure that a large majority of cooling water withdrawn from waters of the United States are subject to the rule's requirements for minimizing adverse environmental impact. Because power-generating facilities typically use far more than 25 percent of the water they withdraw exclusively for cooling purposes, the 25 percent threshold will ensure that intake structures accounting for nearly all cooling water used by the power sector are addressed by today's rule requirements. While manufacturing facilities often withdraw water for more purposes than cooling, the majority of the water is withdrawn from a single intake structure. Once water passes through the intake, water can be apportioned to any desired use, including uses that are not related to cooling. However, as long as at least 25 percent of the water is used exclusively for cooling purposes, the intake is subject to the requirements of today's rule. EPA estimates that approximately 70 percent of manufacturers and 87 percent of power-generating facilities that meet the first three criteria for applicability outlined above also use 25 percent or more of intake water for cooling and thus are subject to today's rule. (See 66 FR 65288, December 18, 2001.)

For facilities that are below any of the applicability thresholds in today's rule—for example, a facility that withdraws less than 25 percent of the intake flow for cooling purposes—the Director must set appropriate requirements on a case-by-case basis, using BPJ, based on § 125.90(b). Today's rule is not intended to constrain permit writers at the Federal, State, or Tribal level, from addressing such cooling water intake structures. Also, EPA decided to adopt for the final rule the proposed provision that requires the owners and operators for certain categories of facilities (existing offshore oil and gas facilities, existing offshore seafood processing facilities and offshore LNG terminals) to meet case-by-case BTA impingement and entrainment requirements, established by the Director. Such facilities are subject to permit conditions implementing CWA section 316(b) if the facility is a point source that uses a cooling water intake structure and has, or is required to have, an NPDES permit.

D. What is an ''existing facility'' for purposes of the final rule?

In today's rule, EPA is defining the term ''existing facility'' to include any facility subject to section 316(b) that is not a ''new facility'' as defined in 40 CFR 125.83 (the Phase I rule).

A point source discharger would be subject to Phase I or today's rule even if the cooling water intake structure it uses is not located at the facility.[5] In addition, modifications or additions to the cooling water intake structure (or even the total replacement of an existing cooling water intake structure with a new one) does not convert an otherwise unchanged existing facility into a new facility, regardless of the purpose of such changes (e.g., to comply with today's rule or to increase capacity). Rather, the determination as to whether a facility is new (Phase I) or existing (today's rule) focuses on whether or not it is a greenfield or stand-alone facility whose processes are substantially independent of an existing facility, and whether or not there are changes to the cooling water intake. New facility does not include new units that are added to a facility for purposes of the same general industrial operation. For example, a new peaking unit at an existing electrical generating station is not a new facility (40 CFR 125.83). The distinction between an existing facility and a new facility is separate from the distinction between an existing unit at an existing facility and a new unit at an existing facility, which is discussed at greater length in Section J below.

E. What is ''cooling water'' and what is a ''cooling water intake structure?''

EPA has slightly revised the definition of *cooling water intake structure* from proposal for today's rule. In today's final rule, a cooling water intake structure is defined as the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. Under the definition in today's rule, the cooling water intake structure extends from the point at which water is first withdrawn from Waters of the United States up to, and including, the intake pumps. The final rule at § 125.91(c) also specifies that obtaining cooling water from a public water system, using reclaimed water from wastewater treatment facilities (such as wastewater treatment plant ''gray'' water) or desalination plants, or recycling treated process wastewater effluent does not constitute use of a cooling water intake structure for purposes of applicability of this rule. As a point of clarification, facilities subject to today's rule may choose to use another entity's treated wastewater as a source of cooling water, thereby reducing cooling water withdrawals and associated impingement and entrainment. EPA notes that because the entity providing the wastewater for cooling has already treated it to meet any applicable discharge requirements (e.g., otherwise applicable effluent limitations guidelines and standards, water quality standards, etc.), EPA is not concerned that this provision will lead to pollutant discharges that would not have occurred if the treated effluent had been discharged by the other entity.

Today's rule adopts the new facility rule's definition of *cooling water* as water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The definition specifies that the intended use of cooling water is to absorb waste heat [not being efficiently used or recaptured for production and thus] rejected from the process or processes used or from auxiliary operations on the facility's premises. The definition also indicates that cooling water obtained from a public water system, reclaimed water from wastewater treatment facilities or desalination plants, treated effluent from a manufacturing facility, or cooling water that is used in a manufacturing process either before or after it is used for cooling as process water would not

[5] For example, a facility might purchase its cooling water from a nearby facility that owns and operates a cooling water intake structure.

be considered cooling water for the purposes of determining whether 25 percent or more of the actual intake flow is cooling water. This clarification is necessary because cooling water intake structures typically bring water into a facility for numerous purposes, including industrial processes; use as circulating water, service water, or evaporative cooling tower makeup water; dilution of effluent heat content; equipment cooling; and air conditioning. Note, however, that all intake water (including cooling and non-cooling process) is included in the determination as to whether the 2 mgd DIF threshold for covered intake structures is met.

F. Would my facility be covered only if it is a point source discharger?

Today's rule applies only to facilities that have an NPDES permit or are required to obtain one. This is the same requirement EPA included in the Phase I new facility rule at § 125.81(a)(1). Requirements for complying with CWA section 316(b) will continue to be applied through NPDES permits.

On the basis of the Agency's review of potential existing facilities that employ cooling water intake structures, the Agency anticipates that most facilities will control the intake structure that supplies them with cooling water, and discharge some combination of their cooling water, wastewater, or stormwater to a water of the United States through a point source regulated by an NPDES permit. In such cases, the facility's NPDES permit must include the requirements for the cooling water intake structure. If an existing facility's only NPDES permit is a general permit for stormwater discharges, the Agency anticipates that the Director will write an individual NPDES permit containing requirements for the facility's cooling water intake structure. Alternatively, requirements applicable to cooling water intake structures could be incorporated into general permits. If requirements are placed into a general permit, they must meet the requirements set out at 40 CFR 122.28.

As EPA stated in the preamble to the final Phase I rule (66 FR 65256, December 18, 2001), the Agency encourages the Director to closely examine scenarios in which a facility withdraws significant amounts of cooling water from waters of the United States but is not required to obtain an NPDES permit. As appropriate, the Director must apply other legal requirements, where applicable, such as CWA sections 401 or 404, the Coastal Zone Management Act, the National Environmental Policy Act, the Endangered Species Act, or similar State or Tribal authorities to address adverse environmental impact caused by cooling water intake structures at those facilities.

G. Would my facility be covered if it withdraws water from waters of the united states? what if my facility obtains cooling water from an independent supplier?

The requirements in today's rule apply to cooling water intake structures that have the design capacity to withdraw amounts of water greater than 2 mgd from waters of the United States. Waters of the United States include the broad range of surface waters that meet the regulatory definition at 40 CFR 122.2 and 40 CFR 230.3, which includes lakes, ponds, reservoirs, nontidal rivers or streams, tidal rivers, estuaries, fjords, oceans, bays, and coves. These potential sources of cooling water can be adversely affected by impingement and entrainment.

Some facilities use an impoundment such as a man-made pond or reservoir as part of a cooling system. Cooling water is withdrawn from the pond or reservoir at one point and heated water is discharged to a different point, using mixing and evaporative processes. As explained above, section 316(b) and today's final rule apply only to withdrawals of cooling water from waters of the United States; accordingly, to the extent a facility withdraws cooling water from a pond or reservoir that is not itself a water of the United States and does not withdraw any make-up water from waters of the U.S., the requirements of today's rule do not apply to such systems. Impoundments that are not constructed from a waters of the U.S. but do withdraw make-up water from waters of the U.S. can be closed-cycle recirculating systems subject to the requirements of today's rule, provided that withdrawal for make-up water is minimized.

Facilities that withdraw cooling water from impoundments that are in whole or in part waters of the United States and that meet the other criteria for coverage (including the requirement that the facility has or will be required to obtain an NPDES permit) are subject to today's rule. In today's rule, the agency is defining the term closed-cycle recirculating system to include, at § 125.92(c)(2), a system with impoundments of waters of the U.S. where the impoundment was lawfully created [6] for the purpose of serving as part of the cooling water system. In determining whether an impoundment qualifies as a closed-cycle recirculating system, the Director will determine whether the make-up water withdrawals for such a system have been minimized. In many cases, EPA expects that such make-up water withdrawals are commensurate with the flows of a closed-cycle cooling tower. Some of these impoundments may qualify for the waste treatment exclusion found in the definition of a waste treatment system at 40 CFR 122.2, and this rule does not affect the applicability of that exclusion.

EPA does not intend for this rule to change the regulatory status of impoundments. Impoundments are addressed in the definition of *waters of the United States* at 40 CFR 122.2 and 40 CFR 230.3. The determination whether an impoundment is a water of the United States is to be made by the Director on a site-specific basis. The EPA and the U.S. Army Corps of Engineers have jointly issued jurisdictional guidance concerning the term *waters of the United States* in light of the Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (SWANCC). A copy of that guidance was published as an Appendix to an Advanced Notice of Proposed Rulemaking on the definition of the phrase *waters of the United States,* see 68 FR 1991, January 15, 2003, which is at *http://www.epa.gov/owow/wetlands/pdf/ANPRM-FR.pdf.* The agencies additionally published guidance in 2008 regarding the term *waters of the United States* in light of both the *SWANCC* and subsequent *Rapanos* case (*Rapanos* v. *United States,* 547 U.S. 715 (2006)). The EPA published a proposed revision to the definition of ''Waters of the United States'' under the Clean Water Act on April 21, 2014 (see 79 FR 22188).

EPA recognizes that some impoundments may be man-made waterbodies that support artificially managed and stocked fish populations. As a result, EPA has included a provision in today's final rule to allow the Director to waive certain permit application requirements for such facilities. Note, however, that these facilities are still subject to the final rule.

EPA acknowledges that the point of compliance for facilities located on

[6] The owner or operator of the facility would provide documentation such as the project purpose statement for the Clean Water Act section 404 permit obtained to construct the impoundment. If the impoundment was created prior to the CWA requirement to obtain a section 404 permit, the owner or operator would provide any other license or permit obtained to lawfully construct the impoundment for the purposes of a cooling water system.

impoundments may also vary depending on where the facility withdraws from a water of the United States. Again, only cooling water systems with withdrawals of cooling water from waters of the United States are covered by section 316(b) and today's rule. Because a facility may withdraw cooling water from a water of the United States either directly or as makeup water for a closed-cycle cooling system, the Director may determine where within a facility's cooling water intake structure is or are the facility's point or points of compliance.

The Agency recognizes that some facilities that have or are required to have an NPDES permit might not own and operate the intake structure that supplies their facility with cooling water. In addressing facilities that have or are required to have an NPDES permit that do not directly control the intake structure that supplies their facility with cooling water, § 125.91 provides (similar to the new facility rule) that facilities that obtain cooling water from a public water system, use reclaimed water from a wastewater treatment facility or desalinization plant, or use treated effluent are not deemed to be using a cooling water intake structure for purposes of this rule. However, obtaining water from another entity that is withdrawing water from a water of the United States will be counted as using a cooling water intake structure for purposes of determining whether an entity meets the threshold requirements of the rule. For example, facilities operated by separate entities might be located on the same, adjacent, or nearby property. One of these facilities might take in cooling water and then transfer it to other facilities that discharge to a water of the United States. Section 125.91(b) specifies that use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier or suppliers withdraw water from waters of the United States but that is not itself a new or existing facility subject to CWA section 316(b), except if it is a public water system, a wastewater treatment facility or desalination plant providing reclaimed water, or a facility providing treated effluent for reuse as cooling water pursuant to § 125.91(c).

As a practical matter, the existing facilities subject to this rule are the largest users of cooling water and therefore typically withdraw volumes of water for cooling that warrant owning the cooling water intake structures. In some cases, such as at nuclear power plants or critical baseload facilities, the need for cooling water includes safety and reliability reasons that would likely preclude any independent supplier arrangements. Therefore, EPA expects this provision will have only limited applicability. EPA is nevertheless retaining the provision to prevent facilities from circumventing the requirements of today's rule by creating arrangements to receive cooling water from an entity that is not itself subject to today's rule and that is not otherwise explicitly exempt from today's rule (such as drinking water or treatment plant discharges reused as cooling water).

H. What intake flow thresholds result in an existing facility being subject to the final rule?

EPA determines the cooling water flow at a facility in two ways. The first is based on the DIF, which reflects the maximum intake flow the facility is capable of withdrawing. While this normally is limited by the capacity of the cooling water intake pumps, other parts of the cooling water intake system could impose physical limitations on the maximum intake flow the facility is capable of withdrawing. The second method for determining cooling water flow is based on the AIF, which reflects the actual volume of water withdrawn by the facility. EPA has defined AIF to be the average water withdrawn each year over the preceding three years.[7] Both of these methods are used in today's rule.

Today's final rule applies to facilities that have a total DIF of greater than 2 mgd (see § 125.91).[8] At a threshold of 2 mgd, today's rule covers 99.8 percent of the total water withdrawals by utilities and other industrial sources (if the other criteria for coverage are met), which includes 70 percent of manufacturing facilities and 87 percent of electric generators. EPA also chose the greater than 2 mgd threshold because it was consistent with the applicability criteria in the Phase I rule.[9]

There are substantial environmental benefits that will accrue with a threshold of 2 mgd. For example, EPA's analysis indicates that greater than 82 percent of impinged fish mortality across all facilities would be prevented by this rule at this threshold. EPA also considered a threshold of 50 mgd. The record includes 38 studies documenting IM at more than 40 facilities with flows lower than 50 mgd. Further, the industry questionnaire demonstrates that such facilities are twice as likely to have no controls in place for impingement or entrainment than are facilities with intake flows greater than 50 mgd. In addition, lower intake flow facilities can have similar impacts to those of larger flow facilities as sizable numbers of fish are impinged by lower flow facilities. Moreover, site-specific impacts of lower flow facilities may be significant, particularly where threatened or endangered species are present.

Although smaller flow facilities (those less than 50 mgd) constitute a large proportion of the total number of the facilities regulated (476 of 1,065), the total compliance cost for these smaller facilities are only a small portion of the total compliance cost of the rule ($23 million of $275 million). Thus any perceived aggregate cost savings from setting the threshold higher than 2 mgd would be minimal.

There is no appreciable difference in the cost effectiveness of the rule with a higher applicability threshold. For example, the cost effectiveness of the rule with a threshold of 2 mgd is $0.42 per age-one equivalent losses (A1E). At a threshold of 50 mgd the cost effectiveness would be $0.41 per A1E. In addition, the incremental cost of the 2 mgd threshold relative to a 50 mgd threshold is negligible for the electric power industry at less than 0.1 percent of annual electricity sector revenue, which exceeds $126 billion. The facility-level impacts are negligible to zero at either 2 or 50 mgd threshold. At the 2 mgd threshold, only 5 (1 percent) of the manufacturing facilities have a cost-to revenue ratio exceeding 1 percent (but less than 3 percent). While this drops to zero facilities at the 50 mgd threshold, the difference of 5 facilities out of 509 facilities is not significant. Costs for lower flow facilities are so small that the average annual household utility bill would not measurably decrease by changing the threshold from 2 to 50 mgd. While 58 percent of the small facilities affected by the final rule are below 50 mgd, 40 percent of them already meet one of the compliance alternatives for impingement mortality of the rule and likely would not need to install any additional compliance technologies. And small businesses account for only 17 percent of facilities at or below 50 mgd, demonstrating that there would

[7] For permit terms subsequent to the first permit issued under today's rule, the rule defines AIF as the average flows over the previous 5 years.

[8] The 2004 Phase II rule would have applied to existing power-generating facilities with a design intake flow of 50 mgd or greater. Facilities potentially regulated by the Phase III rule had a DIF of greater than 2 mgd.

[9] For more information, see 65 FR 49067, August 10, 2000.

not be a disproportionate impact on small businesses at a 2 mgd threshold.

Thus, EPA concluded that the threshold of 2 mgd ensures that the users of cooling water causing the most adverse environmental impact are subject to the rule. Raising the threshold for applicability of the rule's impingement and entrainment requirements to 50 mgd as some commenters suggested was not supportable given the statistics and information described above.

Raising the applicability threshold to 50 mgd would have meant that 476 facilities, almost half of the 1,065 facilities subject to the national standards set by today's rule, would not be subject to the rule. Ignoring so many facilities when setting national standards fails to apply the common sense approaches set forth in this rule for minimizing adverse environmental impacts from cooling water intake structures.

Excluding such a large number of facilities from this rule would create regulatory uncertainty for those facilities since they would remain subject to CWA permitting requirements, but without the benefits of the structure of this rule. Directors would have an obligation to establish controls on a case-by-case basis for these lower flow facilities using a BPJ analysis instead of using the more straightforward and transparent provisions of setting controls based on national standards contained in this rule. Such BPJ analyses can be uncertain, and can be time consuming and complex to develop for both Directors and owners and operators of facilities. Case-by-case BPJ permits (instead of permits based on the national standards in today's rule) would likely increase the time and costs to states for such permits to be developed, further delaying the minimization of adverse environmental impacts called for by CWA section 316(b). Maintaining an applicability threshold of 2 mgd DIF best combines the shared goals of minimizing adverse environmental impacts as required by the CWA, and the predictability and flexibility contained in the rule.

EPA acknowledges that there may be circumstances where flexibility in the application of the rule may be called for and the rule so provides. For example, some low flow facilities that withdraw a small proportion of the mean annual flow of a river may warrant special consideration by the Director. As an illustration, if a facility withdraws less than 50 mgd AIF, withdraws less than 5 percent of mean annual flow of the river on which it is located (if on a river or stream), and is not co-located with other facilities with CWISs such that it contributes to a larger share of mean annual flow, the Director may determine that the facility is a candidate for consideration under the de minimis provisions contained at § 125.94(c)(11). In the case of facilities on lakes and reservoirs, co-location would be better determined by multiple CWIS facilities on the same waterbody, rather than distance.

In either case, the flexibilities contained in the rule for the Director to consider the site-specific characteristics of each intake structure within the national standard provide a useful mechanism for facilities with lower intake flows and low impacts to be considered.

EPA is continuing to base applicability on DIF as opposed to AIF for several reasons. In contrast to AIF, DIF is a fixed value based on the design of the facility's operating system and the capacity of the circulating and other water intake pumps. This provides clarity because the DIF does not vary with facility operations, except in limited circumstances, such as when a facility undergoes major modifications. On the other hand, actual flows can vary significantly over sometimes short periods. For example, a peaking power plant might have an AIF close to the DIF during times of full energy production, but an AIF of zero during lengthy periods of standby. Use of DIF provides clarity as to regulatory status, is indicative of the potential magnitude of environmental impact, and avoids the need for monitoring to confirm a facility's status. For more information about these thresholds, see 69 FR 41611, July 9, 2004.

Under this rule, all facilities with a DIF of greater than 2 mgd, that meet the other three criteria for applicability of today's rule, must submit basic information describing the facility, Source Water Physical Data, Source Water Biological Characterization Data, and Cooling Water Intake System Data. In addition, these facilities must submit additional facility-specific information including the selected impingement compliance option, and operational status of each of the facility's units.[10] Certain facilities withdrawing the largest volumes of water for cooling purposes have additional information and study requirements such as relevant biological survival studies and the entrainment study as described below.

The final rule uses AIF rather than DIF for purposes of determining which facilities must provide the information required in § 122.21(r)(9) through (13), referred to as the entrainment study. Thus, the rule provides that any facility subject to the rule with actual flows in excess of 125 mgd must provide an entrainment study with its permit application (which includes the Entrainment Characterization Study at § 122.21(r)(9)).[11] Adverse environmental impacts from entrainment result from actual water withdrawals, and not the maximum designed level of withdrawal. Further, using actual flow might encourage some facilities to adopt operational practices to reduce their flows below 125 mgd AIF to avoid collecting supplemental data and submitting the additional entrainment study. Furthermore, any facility that has DIF greater than 2 mgd, that meets the other three criteria for applicability of today's rule, is required to submit basic information that will allow the Director to verify its determination of whether it meets the 125 mgd AIF threshold.

EPA has selected an administrative threshold of 125 mgd AIF for submission of the entrainment study because this threshold will capture 90 percent of the actual flows but will apply to only 30 percent of existing facilities. Further, based on EPA's data there are no closed-cycle recirculating systems in use above this threshold. The 125 mgd AIF threshold will significantly limit facility burden at more than two-thirds of the potentially affected facilities while focusing the Director on major cooling water withdrawals. Contrary to a number of public comments, however, EPA is not implying or concluding that the 125 mgd threshold is an indicator that facilities withdrawing less than 125 mgd are (1) not causing any adverse impacts or (2) automatically qualify as meeting BTA. In other words, the threshold, while justified on a technical basis, does not result in exemptions from the rule. Instead, EPA is making a policy decision as to which facilities must provide a certain level and type of information. The Director, of course, will retain the discretion to require reasonable information to make informed decisions at the smaller facilities. The 125 mgd threshold focuses on the facilities with the highest intake flows and the highest likelihood of causing adverse impacts; it is not an

[10] The final rule allows the Director to waive certain information submission requirements for facilities that already employ closed-cycle cooling.

[11] For impoundments constructed in uplands or not in waters of the United States, the point of compliance for measuring AIF to determine if it is greater than 125 mgd is the intake into the impoundment from the waters of the United States.

indicator that facilities under that threshold are no longer of concern in the final rule.

In today's rule, EPA seeks to clarify that for some facilities, the DIF is not necessarily the maximum flow associated with the intake pumps. For example, a power plant might have redundant circulating pumps, or might have pumps with a name plate rating that exceeds the maximum water throughput of the associated piping. EPA intends for the DIF to reflect the maximum rate at which a facility can physically withdraw water from a source waterbody (usually normalized to a daily rate in mgd). This also means that a facility that has permanently taken a pump out of service should be able to consider such constraints when reporting its DIF, as the facility's capacity to withdraw water may have fundamentally changed. Additionally, if a facility's flow is limited by constrictions in the piping or other physical limitations (e.g., a given portion of its cooling system that can only safely handle a given amount of flow) and that flow is lower than the DIF for the pumps, the facility should be able to consider such constraints when reporting its DIF, because it is not capable of withdrawing its full pumping DIF without compromising the cooling system.

I. What are the requirements for existing offshore oil and gas facilities, offshore seafood processing facilities or LNG terminals BTA requirements under the final rule?

Under today's rule, existing offshore oil and gas facilities, existing offshore seafood processing facilities and existing LNG terminals will be subject to section 316(b) requirements on a BPJ basis. In the Phase III rule, EPA studied offshore oil and gas facilities and offshore seafood processing facilities [12] and could not identify any technologies (beyond the protective screens already in use) that are technically feasible for reducing impingement or entrainment in such existing facilities.[13] As discussed in the Phase III rule, known technologies that could further reduce impingement or entrainment would result in unacceptable changes in the envelope of existing platforms, drilling rigs, mobile offshore drilling units, offshore seafood processing facilities, and similar facilities as the technologies would project out from the hull, potentially decrease the seaworthiness, and potentially interfere with structural components of the hull. It is also EPA's view that for many of these facilities, the cooling water withdrawals are most substantial when the facilities are operating far out at sea and, therefore, not withdrawing from a water of the United States. EPA is aware that LNG facilities may withdraw hundreds of million gallons per day of seawater for warming (re-gasification). However, some existing LNG facilities might still withdraw water where 25 percent or more of the water is used for cooling purposes on an actual intake flow basis. EPA has not identified a uniformly applicable and available technology for minimizing impingement mortality and entrainment at these facilities. However, technologies might be available for some existing LNG facilities. LNG facilities that withdraw any volume of water for cooling purposes will be subject to site-specific, BPJ determinations of BTA.

EPA has not identified any new data or approaches that would result in a different determination. Therefore, EPA has adopted the approach of the proposed rule and is requiring that NPDES Permit Directors, on a case-by-case basis using BPJ, determine BTA for existing offshore oil and gas extraction facilities, existing offshore seafood processing facilities, and existing LNG terminals.

J. What is a ''new unit'' and how are new units addressed under the final rule?

Today's rule establishes requirements for new units at an existing facility that are different than those applicable to existing units at an existing facility. The requirements for new units at existing facilities are modeled after the requirements for a new facility in the Phase I rule. Under today's rule, a new unit means a newly built, stand-alone unit, whose construction begins after the effective date of the rule. EPA is also clarifying that while Phase I does not include units newly constructed at an existing facility for the same general industrial operation, such units do constitute a new unit at existing facilities and, as such, are subject to today's final rule.

On the basis of the public comments received on how to define ''new unit,'' EPA provides a clear definition for this term in the final rule. The definition for a new unit at an existing facility establishes a clear regulatory framework for both affected facilities and Directors. This definition captures facilities that are undergoing major construction projects involving the construction of a new stand-alone unit, while not discouraging upgrades. For example, a nuclear facility conducting a measurement uncertainty capture or a stretch power uprate, or a fossil-fuel facility repowering an existing generating unit, would not be considered to result in the relevant unit becoming a new unit. As another example, under this definition placing an offshore facility or vessel into a dry dock for maintenance or repair does not result in either the offshore facility, vessel, or the dry dock as being defined as a new unit.

Section VI discusses EPA's rationale for establishing the definitions for new units at existing facilities described below.

1. Electric Generators

The final rule defines a new unit at an existing facility as a newly built, stand-alone unit that is constructed at an existing facility and that does not meet the definition of a new facility. An existing unit that is repowered or undergoes significant modifications (such as where the turbine and condenser are replaced) is not considered a new unit. Exhibit I–4 below provides several examples and whether these hypothetical units will be defined as new or existing units.

EXHIBIT I–4—EXAMPLES OF NEW AND EXISTING UNITS AT EXISTING ELECTRIC GENERATION FACILITIES

Examples of new units at an existing facility	Examples of existing units
A unit that is constructed at a stand-alone location at an existing facility regardless of any plans to retire any other unit at the facility in the future.	A unit that is repowered or undergoes significant modifications.
	A retrofitted with a new boiler or fuel type.

[12] EPA studied naval vessels and cruise ships as part of its developing a general NPDES permit for discharges from oceangoing vessels. (For more information, see *http://cfpub.epa.gov/npdes/home.cfm?program_id=350*.) EPA studied offshore seafood processing facilities and oil and gas exploration facilities in the 316(b) Phase III rule.

[13] As discussed in today's preamble, requirements for new offshore facilities that were set forth in the Phase III rule remain in effect.

2. Manufacturers

At manufacturing facilities that generate electricity onsite, the previous discussion of how to define new units at existing electric generating facilities generally applies. Some manufacturers employ different industrial processes than an electric generator and therefore have different industrial equipment (including cooling systems). In particular, manufacturers may not use a steam condenser or steam turbine for their industrial processes, making the definition for ''repowering'' above inappropriate for manufacturing facilities. However, manufacturers may have opportunities to reuse cooling water that power plants do not, and in site visits, EPA found many manufacturers have conducted energy and water audits resulting in significant reductions in water withdrawals. The final rule provides for manufacturers to receive credit for such reductions in fresh water withdrawals.

It is not as easy to identify a similar conceptual approach for defining new manufacturing units at existing manufacturing facilities because waste heat can be generated from a variety of sources including exothermic processes, product heating and cooling, and the processing, handling, treating, or disposal of feed streams, waste streams, by-products, and recycled components. Sources may include direct cooling transferred across an inert material (e.g., heat exchanger, steam condenser), indirect cooling using a working fluid (e.g., chillers, refrigeration), or contact cooling where cooling water comes into direct contact with a product or process stream.[14] Unlike electric generating units where the majority of cooling water comes from a single process source (the steam condenser), manufacturing units may include many separate non-contact or contact cooling water sources dispersed throughout the production processes and the facility. Thus, a definition for manufacturing units must take into consideration a broader category of cooling water sources.

For power generators, the term ''generating unit'' is quite clear since there is only one product (electricity), the non-contact cooling water predominantly comes from one source, and the application of the term is well understood in the industry. But for some manufacturing facilities, it may be unclear what constitutes a ''unit'' since manufacturing processes can involve numerous vertically integrated processes or production steps that may involve intermediate products. For example, a unit could encompass an entire series of production steps (start to finish) or simply the individual steps. Also, there may be ancillary support equipment that serves various functions and it is not clear whether this will be considered a unit or part of a unit. For example, a petroleum refiner will typically include various processes such as distillation, cracking, hydrotreating, coking, reforming, and different types of various products. Various intermediate products from these processes may be directly transported (piped) from one process to another or stored and some may be sold. And because various intermediate and final process products may be blended into different products, differentiating units on a product or intermediate product basis may not provide clear distinctions.

For these reasons EPA has defined new unit to simply mean a new stand-alone unit. A new unit may include one or more distinct production lines that are added to increase product output and operate parallel to and independently of existing production equipment. A new unit does not include the replacement or rebuilding of one or more distinct production lines or distinct processes involving the replacement of the majority of the waste heat producing equipment that serves as sources of non-contact cooling water and the majority of the heat exchanging equipment that contributes heat to the non-contact cooling water. Such modifications alone do not render the unit a new unit. A unit undergoing such modifications would continue to be considered an existing unit and would be regulated under the existing unit provisions of this rule. This definition therefore does not impose any disincentives for the replacement/upgrade of individual components or ancillary equipment alone.

Exhibit I–5 below provides several examples of whether these hypothetical units are defined as new or existing units. As noted above, the Director has broad discretion to assess the scope of any modifications at the manufacturing facility and to determine whether the new construction comprises a stand-alone unit. For the purposes of today's final rule, the Director does not need to address whether the stand-alone unit is for the same general industrial purposes, or whether the new unit is a replacement unit. The key factors in assessing whether a unit will be defined as new lies with whether the construction results in a stand-alone unit.

EXHIBIT I–5—EXAMPLES OF NEW AND EXISTING UNITS AT MANUFACTURERS

Examples of new units at an existing facility	Examples of existing units at an existing facility
A unit that is constructed at a stand-alone location at an existing facility (either adjacent to existing units or on newly acquired or developed property) regardless of any plans to retire any other unit at the facility in the future.	A unit where only the waste heat generating process equipment or the cooling system equipment is replaced.
A unit that is constructed adjacent to an existing unit for the same industrial activity (such as expanding the production output by building a second unit as a stand-alone unit next to the existing unit).	A unit where modifications are made to the waste heat generating process equipment or the cooling system (e.g., optimization, repairs, upgrades to operational elements).
	Replacement or upgrade of ancillary equipment (e.g., pumps, motors, HVAC, etc.).

K. Amendments Related to the Phase I Rule

EPA is making limited changes to the Phase I rule at 40 CFR Part 125 Subpart I. The changes fall into two categories. The first is deleting the provision in the Phase I rule that would allow a facility to demonstrate compliance with the Phase I BTA requirements in whole or in part through restoration measures. This change responds to the decision of the U.S. Court of Appeals for the Second Circuit, which remanded these provisions to EPA because it concluded that the statute did not authorize

[14] Note that EPA did not include the contact cooling category as part of its analysis of possible closed-cycle recirculating system requirements but contact cooling water does nonetheless fall within the definition of cooling water at § 125.92.

restoration measures to comply with CWA section 316(b) requirements. The second category of changes reflects technical corrections or errors that do not change the substance of the Phase I rule. EPA has not reopened any other aspects of the Phase I rule other than the provisions specifically noted here.

1. Restoration Provisions Not Authorized

The Phase I final rule established two compliance tracks. Track I requires facilities to restrict intake flow and velocity. Track II gives a facility the option of demonstrating to the Director that the control measures it employs will reduce the level of adverse environmental impact to a comparable level to what would be achieved by meeting the Track I requirements. As part of this demonstration, Track II originally allowed a facility to make use of restoration measures. The Comprehensive Demonstration Study allowed a quantitative or qualitative demonstration that restoration measures would meet, in whole or in part, the performance levels of Track I. Similarly, the Verification Monitoring Plan could be tailored to verify that the restoration measures would maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved under Track I. See 66 FR 65280–65281, December 18, 2001.

Upon legal challenge, the Second Circuit Court concluded that EPA exceeded its authority by allowing new facilities to comply with CWA section 316(b) through restoration measures, and remanded that aspect of the rule to EPA. The Supreme Court did not grant the petitions for writs of certiorari concerning restoration provisions. Today's final rule amends Phase I to remove those provisions in §§ 125.84(d) and 125.89(b)(1)(ii) authorizing restoration measures in conformance with the Second's Circuit's decision. Today's rule also specifically deletes permit application requirements contained in the Comprehensive Demonstration Study at § 125.86(c)(2)(ii); evaluation of proposed restoration measures at § 125.86(c)(2)(iv)(C); and verification monitoring requirements at § 125.86(c)(2)(iv)(D)(2) that are specific to restoration. EPA acknowledges these changes might reduce the alternatives available to some Phase I facilities. EPA notes, however, that the deletion of restoration measures does not otherwise alter the availability of Track II. In any event, EPA's determination of BTA for Phase I did not presume reliance on the restoration provisions, and the deletion of restoration measures in no way alters the Agency's BTA determination for Phase I facilities.

2. Corrections to Subpart I

Today's final rule changes the applicability of the technical requirements at § 125.84 and permit application requirements at § 125.86 statement to match the applicability statement at § 125.81(a)(3). The applicability in all three instances should specify DIF or withdrawals ''greater'' than the specified value of 2 mgd. See Basis for the Final Regulation at 66 FR 65270, December 18, 2001.

Today's rule also corrects the source waterbody flow information submission requirements. Track I requirements at § 125.84(b)(3) apply to new facilities that withdraw equal to or greater than 10 mgd. Track I requirements at § 125.84(c)(2) apply to facilities that withdraw less than 10 mgd. The source waterbody flow information under § 125.86(b)(3) requires a facility to demonstrate it has met the flow requirements of both §§ 125.84(b)(3) ''and'' 125.84(c)(2). However, a facility cannot be subject to both §§ 125.84(b)(3) and 125.84(c)(2) at the same time. Accordingly, the word ''and'' should read as ''or'' in § 125.86(b)(3).

In addition, today's final rule corrects the permit application requirement for the Source Water Biological Characterization at § 122.21(r)(4). Accordingly, references to the Source Water Biological Characterization should read as (r)(4). However, the references to the Source Water Biological Characterization at § 125.86(b)(4)(iii), at § 125.87(a), and at § 125.87(a)(2) incorrectly refer to § 122.21(r)(3) and are thus being corrected.

II. Legal Authority for and Background of the Final Regulation

A. Legal Authority

Today's final rule is issued under the authority of Clean Water Act sections 101, 301, 304, 308, 316, 401, 402, 501, and 510, 33 U.S.C. 1251, 1311, 1314, 1318, 1326, 1341, 1342, 1361, and 1370.

B. Purpose of the Regulation

The purpose of today's rule is to reduce impingement and entrainment of fish, shellfish and other aquatic organisms at cooling water intake structures. Today's rule establishes national requirements for cooling water intake structures at existing facilities under section 316(b) of the CWA. That section provides that any standard established pursuant to CWA sections 301 or 306 and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the BTA for minimizing adverse environmental impact. Today's rule establishes requirements applicable to all existing power-generating facilities and existing manufacturing and industrial facilities that are point sources, that have a DIF of greater than 2 mgd from waters of the United States, and use at least 25 percent of the water they withdraw exclusively for cooling purposes on an actual intake flow basis. In addition, EPA is today also making minor changes to its earlier rule establishing section 316(b) requirements for new facilities. Specifically, EPA is removing a provision that would have allowed a restoration-based alternative for complying with performance standards as well as the associated monitoring and other requirements for demonstrating compliance.

C. Background

1. The Clean Water Act

a. General

The Federal Water Pollution Control Act, also known as the CWA, 33 U.S.C. 1251 et seq., seeks to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters.'' 33 U.S.C. 1251(a). Among the goals of the Act is, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. 33 U.S.C. 1251(a)(2).

In furtherance of these objectives, the CWA establishes a comprehensive regulatory program, key elements of which are (1) a prohibition on the discharge of pollutants from point sources to waters of the United States, except in compliance with the statute and (2) authority for EPA or authorized States or Tribes to issue NPDES permits that authorize and regulate the discharge of pollutants.

CWA section 402 authorizes EPA (or an authorized State or Tribe) to issue an NPDES permit to any person discharging any pollutant or combination of pollutants from a point source into waters of the United States. Forty-six States and one U.S. territory are authorized under section 402(b) to administer the NPDES permitting program. NPDES permits restrict the types and amounts of pollutants, including heat, that may be discharged from various industrial, commercial, and other sources of wastewater. These permits control the discharge of pollutants by requiring dischargers to meet technology-based and possibly water-quality-based effluent limitations.

Under section 316(b), NPDES permits are required to contain conditions to implement the requirements of section 316(b).

CWA section 510 provides that, except as provided in the CWA, nothing will preclude or deny the right of any State (or political subdivision thereof) to adopt or enforce any requirement respecting control or abatement of pollution; except that if a limitation, prohibition or standard of performance is in effect under the CWA, such State may not adopt any other limitation, prohibition, or standard of performance which is less stringent than the limitation, prohibition, or standard of performance under the Act. EPA interprets this to reserve for the States authority to implement requirements that are more stringent than the Federal requirements under state law. *PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology,* 511 U.S. 700, 705 (1994). New York and California have enacted State requirements that are at least as stringent as those of the final rule, and therefore, EPA has analyzed facilities in those States that are subject to those State requirements as already complying with the final rule.[15] Those facilities still must comply with the administrative requirements of the final rule.

CWA sections 301, 304, and 306 require that EPA develop technology-based effluent limitations guidelines and new source performance standards that are used as the basis for discharge requirements in wastewater discharge permits. EPA develops these effluent limitations guidelines and standards for categories of industrial dischargers on the basis of the pollutants of concern discharged by the industry, the degree of control that can be attained using various levels of pollution control technology appropriate for each industrial process or subcategory, consideration of various economic tests implemented under the authority of the CWA for each level of control, and other factors identified in CWA sections 304 and 306 (such as non-water quality environmental impacts including energy impacts). EPA has promulgated regulations setting effluent limitations guidelines and standards under CWA sections 301, 304, and 306 for 57 industry categories. See 40 CFR parts 405 through 471. EPA has established effluent limitations guidelines and standards that apply to the industry categories that are the largest users of cooling water (e.g., steam electric power generation, paper and allied products, petroleum refining, iron and steel manufacturing, and chemicals and allied products), as well as many other industrial categories that may include facilities subject to this final rule.

b. Section 316(b)

Section 316(b) states, in full,

> Any standard established pursuant to section 301 or section 306 of [the Clean Water] Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

33 U.S.C. 1326(b). This provision is unique among CWA provisions because it addresses the adverse environmental impact caused specifically by the intake of cooling water, in contrast to other provisions of the Act that regulate the discharge of pollutants into waters of the United States.

The CWA does not further define the substantive standard specified in section 316(b)—''best technology available for minimizing adverse environmental impact'' (BTA). 33 U.S.C. 1326(b). The standard that cooling water intake structures must achieve under section 316(b)—BTA—is a different standard from those prescribed under sections 301 and 306 of the Act. *Riverkeeper, Inc.* v. *EPA,* 358 F.3d 174 (2d Cir. 2004). Moreover, unlike sections 304 and 306, section 316(b) does not set forth the specific factors that the EPA must consider in determining BTA. BTA is ''the only substantive statutory requirement explicitly applicable to the intake structure regulations.'' *Id.* at 186. Unlike other provisions of the Act, section 316(b) standards are not subject to a ''host'' of other requirements or limitations. *Ibid.* There is no ''elucidating language applicable to the BTA test.'' *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 221 (2009).[16]

Section 316(b) does, however, cross-reference sections 301 and 306 of the CWA by stating that any standards established pursuant to those sections also require that cooling water intake structures reflect BTA. *Ibid.* This cross reference, in the view of the Second Circuit, is an invitation, not a straitjacket. EPA ''may'' look to the referenced sections in discerning what factors Congress intended EPA to consider in determining BTA.

Because section 316(b) refers to sections 301 and 306 but provides a different standard (''best technology available for minimizing adverse environmental impact'' instead of, for example, ''best available demonstrated control technology'') and does not explicitly provide that regulations pursuant to section 316(b) are subject to the requirements of sections 301 and 306, we think it is permissible for the EPA to look to those sections for guidance but to decide that not every statutory directive contained therein is applicable to the Rule.

The terse statutory description of BTA and the absence of any prescribed statutory factors for consideration in determining BTA suggest that Congress delegated EPA significant rulemaking discretion in this area.[17]

As noted, in contrast to effluent limitations guidelines and standards, the CWA does not describe the factors to be considered in establishing section 316(b) substantive performance requirements that reflect the ''best technology available for minimizing adverse environmental impact'' nor does it require that EPA develop uniform nationally applicable performance requirements through rule making.

The U.S. Supreme Court has, however, recently provided guidance, in *Entergy Corp.* v. *Riverkeeper, Inc.,* in interpreting section 316(b) and what factors EPA may consider in its standard-setting. That decision addressed the question of whether CWA section 316(b) authorizes EPA to compare costs and benefits of various technologies when setting national performance standards for cooling water intake structures under CWA section 316(b). In overturning EPA's earlier rule to establish section 316(b) requirements for existing facilities, the Second Circuit held that balancing costs and benefits was an impermissible factor for standard setting under section 316(b). The Supreme Court reversed and remanded the Second Circuit ruling in a 6–3 opinion authored by Justice Scalia. The Court held that it is permissible for EPA to consider a cost-benefit analysis in setting national performance standards for cooling water intake structures under section 316(b).

[15] For example, California policy addressing 19 coastal power plants would not affect the compliance costs of inland facilities.

[16] Included in an appendix to the decision is a table comparing CWA statutory standards under 301, 306 and 316(b), the table. In the column headed ''Statutorily Mandated Factors,'' for section 316(b), the table states ''N/A.''

[17] The Second Circuit has noted the limited legislative history for section 316(b). ''This paucity of legislative history, when measured against the volumes of drafts and speeches devoted to other aspects of the 1972 amendments, and when combined with the brevity of the provision itself, counsels against imputing much specific intent to Congress beyond the section's words themselves. To the extent the provision is silent on issues to which other sections speak, we hesitate to draw the negative inference that the brevity of *section 316(b)* reflects an intention to limit the EPA's authority rather than a desire to delegate significant rulemaking authority to the Agency.'' *Id.* at 187.

The Court held that EPA has the discretion to consider costs and benefits under section 316(b) but is not required to do so. 556 U.S. 208, 222–23.

The Court's discussion of the language of section 316(b)—section 316(b) is ''unencumbered by specified statutory factors''—and its critique of the Second Circuit's decision affirms EPA's broad discretion to consider a number of factors in standard setting under section 316(b). While the Supreme Court's decision is limited to whether or not EPA may properly consider one factor (cost/benefit analysis) under section 316(b), the language also indicates that EPA has wide discretion in considering other factors that it deems relevant to 316(b) standard setting. 556 U.S. 208, 222 (2009). (''It is eminently reasonable to conclude that § *1326b's* silence is meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree.'').

Regarding the other factors EPA may, but is not mandated to, consider, as noted above, section 316(b) cross references CWA sections 301 and 306 by requiring that any standards established pursuant to those sections also must require that the location, design, construction and capacity of intake structures reflect BTA. Following the decisions of the Second Circuit in reviewing both the Phase I and Phase II rules, EPA has interpreted the cross reference as authorizing consideration of the factors considered under those provisions to help guide section 316(b) rulemaking without determining that each of those factors is applicable to this rule. Thus, for example, section 306 directs EPA to establish performance standards for new sources based on the BADT (best available demonstrated control technology). 33 U.S.C. 1316(a)(1). In establishing BADT, EPA ''shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements.'' 33 U.S.C. 1316(b)(2)(B).

Similarly, CWA section 301 requires EPA, in establishing standards known as *effluent limitations guidelines,* to consider specified factors. For a complete discussion of factors considered in establishing section 301 effluent limits, see 76 FR 22178–22179, April 20, 2011. But, EPA in establishing section 316(b) standards is not constrained in what factors it considers or bound by any statutorily prescribed tests as is the case with sections 301 and 306. Consequently, while section 316(b) expressly refers to section 301 and 306, and, while it shares some of the same words used in sections 301(b) and 306, its language is different.[18] These differences in the statutory descriptions, coupled with the brevity of section 316(b) itself, prompt EPA to examine the factors described in section 301, 306 and, ultimately, section 304 where relevant in EPA's determination of the ''best technology available to minimize adverse environmental impact'' of cooling water for intake structures for existing facilities.

As noted above, there are significant differences between section 316(b) and sections 301, 304 and 306. See *Riverkeeper, Inc.* v. *United States Environmental Protection Agency* (2nd Cir. Feb. 3, 2004) (''not every statutory directive contained [in sections 301 and 306] is applicable'' to a section 316(b) rulemaking). Moreover, as the Supreme Court recognized, while the provisions governing the discharge of toxic pollutants must require the elimination of discharges if technically and economically achievable, section 316(b) has the less ambitious goal of ''minimizing adverse environmental impact.'' 556 U.S. at 219. In contrast to the effluent limitations provisions, the object of the best technology available is explicitly articulated by reference to the receiving water: To minimize adverse environmental impact in the waters from which cooling water is withdrawn. This difference is reflected in EPA's past practices in implementing sections 301, 304, as contrasted with 316(b). For example, EPA has established BAT effluent limitations guidelines and new source performance standards on the basis of the efficacy of one or more technologies to reduce pollutants in wastewater in relation to their costs without necessarily considering the impact on the receiving waters. This contrasts to 316(b) requirements which historically have been developed on a site-specific basis, where EPA has considered the costs of technologies in relation to the benefits of minimizing adverse environmental impact in establishing 316(b) requirements. In *Re Public Service Co. of New Hampshire,* 10 ERC 1257 (June 17, 1977); *In Re Public Service Co. of New Hampshire,* 1 EBAD 455 (Aug. 4, 1978); *Seacoast Anti-Pollution League* v. *Costle,* 597 F. 2d 306 (1st Cir. 1979). EPA concluded that, because both section 301 and 306 are expressly cross-referenced in section 316(b), EPA could reasonably interpret section 316(b) as authorizing consideration, where appropriate, of the same factors, including costs. EPA stresses that it may therefore consider some of the same factors, even if it is not legally required to consider them in the same way.

2. Early Litigation History

On January 19, 1993, a group of individuals and environmental organizations[19] filed, under CWA section 505(a)(2), 33 U.S.C. 1365(a)(2), a complaint in *Cronin, et. al.* v. *Reilly,* 93 Civ. 314 (LTS) (S.D.N.Y.). The plaintiffs alleged that EPA had failed to perform a nondiscretionary duty to issue regulations implementing CWA section 316(b), 33 U.S.C. 1326(b). In 1995, EPA and the plaintiffs executed a consent decree in the case. As amended, it provided for EPA to implement CWA section 316(b) by prescribed dates in the three separate rule-making proceedings. Phase I concerned cooling water intake structures at new facilities, Phase II existing power plants using large volumes of cooling water and Phase III for existing smaller-flow power plants and factories in at least four industrial sectors (pulp and paper making, petroleum and coal products manufacturing, chemical and allied manufacturing, and primary metal manufacturing). EPA promulgated the Phase I rule in December, 2001, the Phase II rule in July, 2004 and the Phase III rule in June, 2006.

On November 17, 2006, some of the same environmental organizations in the *Cronin* case filed a second complaint, amended on January 19, 2007, in *Riverkeeper, et al.* v. *EPA,* 06 Civ. 12987 (S.D.N.Y.) asserting that EPA's Phase III rule failed to discharge EPA's duty under CWA section 316(b).

On August 14, 2008, EPA filed a motion to terminate the *Cronin* proceeding because it had discharged its

[18] Compare ''best technology available for minimizing adverse environmental impacts'' with ''*best practicable control technology currently available'' (301(b)(1)A)), ''best conventional pollutant control technology (301(b)(2)(E)), ''best available technology economically achievable'' (301(b)(2)(A)), and best available demonstrated control technology, (306(b)(1)(B)).* Section 316(b), section 301(b)(1)(A)—the BPT provision—section *301(b)(2)(E)—the BCT provision*—section 301(b)(1)(B)—the BAT provision—and section 306(b)(2)(E). All include the terms ''*best,*'' ''*technology,*'' and ''*available,*'' but none also include the modifying phrase ''for minimizing adverse environmental impacts,'' found in section 316(b). See 33 U.S.C. 1311(b)(1)(A) and (2)(A).

[19] The plaintiffs are the following: Riverkeeper, Inc.; Alex Matthiessen, a/k/a The Hudson Riverkeeper; Maya K. Van Rossum, a/k/a The Delaware Riverkeeper; Terrance E. Backer, a/k/a The Soundkeeper; John Torgan, a/k/a The Narragansett BayKeeper; Joseph E. Payne, a/k/a The Casco BayKeeper; Leo O'Brien, a/k/a the San Francisco BayKeeper; Sue Joerger, a/k/a The Puget Soundkeeper; Steven E. Fleischli, a/k/a The Santa Monica BayKeeper; Andrew Willner, a/k/a The New York/New Jersey Baykeeper; The Long Island Soundkeeper Fund, Inc.; The New York Coastal Fishermen's Association, Inc.; and The American Littoral Society, Inc.

obligations (to take final action) under the decree with respect to the 2004 Phase II and 2006 Phase III rulemakings. Subsequently, EPA entered into a settlement with the plaintiffs in both lawsuits. Under the settlement agreement, EPA agreed to sign a notice of a proposed rulemaking implementing CWA section 316(b) at existing facilities no later than March 14, 2011, and to sign a notice taking final action on the proposed rule no later than July 27, 2012. Plaintiffs agreed to seek dismissal of both their suits, subject to a request to reopen the *Cronin* proceeding if EPA failed to meet the agreed deadlines. The district courts have now entered orders of dismissal. On March 11, 2011, the parties agreed to an amendment to the settlement agreement to extend the date for proposal to March 28, 2011. On July 17, 2012, the parties agreed to an amendment to the settlement agreement to extend the date for the final rule to June 27, 2013. On June 21, 2013, the parties agreed to extend the date to November 4, 2013, to accommodate completion of formal consultation under the Endangered Species Act. In part due to the government shutdown, on November 12, 2013, the parties agreed to extend the date to January 14, 2014. On February 10, 2014, to continue progress on the Endangered Species Act (ESA) consultation process, the parties agreed to extend the date to April 17, 2014. Finally, on April 23 2014, in a conference with the court EPA informed the judge that the EPA and the Services would complete the ESA consultation, so that the EPA would sign the rule by May 16, 2014. The court entered an order provisionally reinstating the case if EPA failed to inform the court by May 19, 2014 that it had taken the contemplated action. On May 19, 2014, the Administrator signed this notice for publication in the **Federal Register**.

3. Prior EPA Actions To Address Cooling Water Intake Structures

a. 1976 Rulemaking

In April 1976, EPA promulgated regulations under section 316(b) that addressed cooling water intake structures. 41 FR 17387, April 26, 1976. The rule added a new § 401.14 to 40 CFR Chapter I that reiterated the requirements of CWA section 316(b). It also added a new part 402, which included three sections: (1) § 402.10 (Applicability), (2) § 402.11 (Specialized definitions), and (3) § 402.12 (Best technology available for cooling water intake structures). Section 402.10 stated that the provisions of part 402 applied to ''cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act.'' Section 402.11 defined the terms *cooling water intake structure, location, design, construction, capacity,* and *Development Document.* Section 402.12 included the following language:

> ''The information contained in the Development Document shall be considered in determining whether the location, design, construction, and capacity of a cooling water intake structure of a point source subject to standards established under section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.''

In 1977, electric utility companies challenged those regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act in promulgating the rule. Specifically, the utilities argued that EPA had violated the Administrative Procedure Act in promulgating regulations mandating consideration of the information in the Development Document in establishing 316(b) conditions in individual NPDES permits because EPA had neither published the Development Document in the **Federal Register** nor properly incorporated the document into the rule by reference. The U.S. Court of Appeals for the Fourth Circuit agreed. The court determined that the information in the Development Document was part of the substance of a regulation imposing specific obligations in mandatory terms. As such, the information must either be published in the **Federal Register** in its entirety or to be reasonably available and properly incorporated by reference under **Federal Register** requirements. The court explained it did not object to site-specific implementation of the section 316(b) requirements (''[w]hile we emphasize we do not fault EPA for its point source by point source application''), it did require EPA to ''devise a less uncertain method of advising those affected of the conditions by which they are to be bound.'' *Appalachian Power Co.* v. *Train,* 566 F.2d 451, 457 (4th Cir. 1977). Without reaching the merits of the regulations themselves, the court remanded the rule. EPA later withdrew part 402. (See 44 FR 32956, June 7, 1979.) Section 402.10, however, now codified at § 401.14, remains in effect.

Following the Fourth Circuit remand of EPA's section 316(b) regulations in 1977, NPDES permit authorities have made decisions implementing CWA section 316(b) and § 401.14 without the direction of a national rule. EPA published draft guidance addressing section 316(b) implementation in 1977. See *Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) Public Law 92–500* (U.S. EPA 1977). That draft guidance describes the studies recommended for evaluating the impact of cooling water intake structures on the aquatic environment and recommends a basis for determining the BTA for minimizing adverse environmental impact. The 1977 section 316(b) draft guidance states, ''[t]he environmental-intake interactions in question are highly site-specific and the decision as to best technology available for intake design, location, construction, and capacity must be made on a case-by-case basis'' (Section 316(b) Draft Guidance, U.S. EPA 1977, p. 4). This site-specific approach was also consistent with the approach described in the 1976 Development Document referenced in the remanded regulation. (See DCN 1–1056–TC from the Phase I docket.) The 1977 section 316(b) draft guidance suggested a general process for developing information needed to support section 316(b) decisions and presenting that information to the Director. The process involved developing a site-specific study of the environmental effects associated with each facility that uses one or more cooling water intake structures, and consideration of that study by the Director in determining whether the facility must make any changes for minimizing adverse environmental impact. Under this framework, the Director determined whether appropriate studies have been performed, whether a given facility has minimized adverse environmental impact, and what, if any, technologies may be required.

b. Phase I—New Facility Rule

i. Rulemaking

On November 9, 2001, EPA took final action on regulations governing cooling water intake structures at new facilities. See 66 FR 65255, December 18, 2001. On December 26, 2002, EPA made minor changes to the Phase I regulations. 67 FR 78947. The final Phase I new facility rule (40 CFR part 125, Subpart I) establishes requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities that have a design capacity to withdraw greater than 2 mgd and use at least 25 percent of the water they withdraw solely for cooling purposes on an actual intake flow basis.

In the new facility rule, EPA adopted a two-track approach. Under Track I, facilities that withdraw equal to or

greater than 10 mgd were required to meet three requirements. First, the intake flow of the cooling water intake structure is restricted, at a minimum, to a level commensurate with that which could be attained by use of a closed-cycle, recirculating cooling system. Second, the design through-screen intake velocity is restricted to 0.5 fps (foot per second). Third, the total quantity of intake is restricted to a proportion of the mean annual flow of a freshwater river or stream, or to a level necessary to maintain the natural thermal stratification or turnover patterns (where present) of a lake or reservoir except in cases where the disruption is beneficial, or to a percentage of the tidal excursions of a tidal river or estuary. Further, if there are, for example, endangered or threatened species stressed by a facility's intake structure, a facility that would otherwise meet the applicable performance requirements may have to select and implement additional design and construction or operational measures to address impingement mortality and entrainment if these measures are inadequate to protect the species. Facilities with greater than 2 mgd but less than 10 mgd flows are not required to reduce intake flow to a level commensurate with a closed-cycle, recirculating cooling system, but they must still meet specific operational criteria.

Under Track II, a facility had the opportunity to demonstrate to the NPDES permitting authority (Director) that the technologies it employs will reduce the level of adverse environmental impact to a comparable level to what would be achieved by meeting the Track I requirements for restricting intake flow and velocity. In making this demonstration, the regulations allow a facility to rely on a combination of measures in addition to technology controls for reducing impingement and entrainment to achieve results equivalent to the Track I intake flow and velocity requirements. Among these measures, the rule would have allowed restoration of the affected waterbody through efforts such as restocking fish and improving the surrounding habitat to offset the adverse effects that would otherwise be caused by operating the intake structures. The Second Circuit, in reviewing the new facility rule, determined that section 316(b) did not authorize the use of restoration measures in complying with the EPA performance standard. (Note that EPA is removing the provision related to restoration measures from the CFR in this rulemaking but has included the above description of the Phase I rule for completeness.) For more information, see Section I above.

In addition, under the Phase I rule, the Director may establish less stringent alternative requirements for a facility if compliance with the Phase I standards would result in compliance costs wholly out of proportion to those EPA considered in establishing the Phase I requirements or would result in significant adverse impacts on local air quality, water resources, or local energy markets.

EPA specifically excluded new offshore oil and gas extraction facilities from the Phase I new facility rule but committed to consider establishing requirements for such facilities in the Phase III rulemaking. 66 FR 65338, December 18, 2001.

ii. Subsequent Litigation

Various environmental and industry groups challenged the Phase I rule. In February 2004, the Second Circuit sustained the entire rule except for the restoration provision, ruling that restoration was not a technology as provided for in section 316(b). With respect to the other provisions of the rule, the court concluded the Phase I rule was based on a reasonable interpretation of the applicable statute and sufficiently supported by the record. Restoration provisions of the rule were remanded to EPA for further rulemaking consistent with the court's decision. *Riverkeeper, Inc.* v. *EPA,* 358 F.3d 174, 191 (2nd Cir., 2004). Today's rule removes the restoration provisions from the Phase I rule. For more details, see Chapter I of this preamble.

c. Phase II—Large Flow Existing Power Plants

i. Rulemaking

On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power-producing facilities. 69 FR 41576, July 9, 2004. The final 2004 Phase II rule applied to existing facilities that are point sources; that, as their primary activity, both generate and transmit electric power or generate electric power for sale or transmission; that use or propose to use a cooling water intake structure with a total DIF of 50 mgd or more to withdraw water from waters of the United States; and that use at least 25 percent of the withdrawn water exclusively for cooling purposes on an actual intake flow basis. In addition, power producers fitting the description above were also subject to the final 2004 Phase II rule even if they obtain their cooling water from one or more independent suppliers of cooling water. Such facilities were subject to the rule if their supplier withdraws water from waters of the United States even if the supplier was not itself a 2004 Phase II existing facility. EPA included this provision to prevent circumvention of the 2004 Phase II rule requirements by a facility purchasing cooling water from entities not otherwise subject to section 316(b).

The final 2004 Phase II rule and preamble also clarified the definition of an *existing* power-producing facility. The 2004 Phase II rule defined an *existing facility* as ''any facility that commenced construction as described in § 122.29(b)(4) on or before January 17, 2002; and any modification of, or addition of a unit at such a facility that does not meet the definition of a new facility at § 125.83.'' Because the definition of the term *existing facility* was based in part on the Phase I definition of the term *new facility,* the preamble to the final 2004 Phase II rule also clarified and provided some examples of how the definition of *existing facility* might apply to certain changes at power-producing facilities.

Under the 2004 Phase II rule, EPA established BTA performance standards for the reduction of impingement mortality and, under certain circumstances, entrainment (see 69 FR 41590–41593, July 9, 2004). The performance standards consisted of ranges of reductions in impingement mortality and, if applicable, entrainment (e.g., reduce impingement mortality by 80 to 95 percent and/or entrainment by 60 to 90 percent) relative to a *calculation baseline* that reflected the level of impingement mortality and entrainment that would occur absent specific controls. These performance standards were not based on a single technology but, rather, on consideration of a suite of technologies that EPA determined were commercially available and economically achievable for the industries affected as a whole (69 FR 41598–41610, July 9, 2004). EPA based the impingement mortality and entrainment performance standards on a suite of technologies because it found no single technology to be effective at all affected facilities. For impingement standards, these technologies included the following: (1) Fine- and wide-mesh wedgewire screens, (2) barrier nets, (3) modified screens and fish return systems, (4) fish diversion systems, and (5) fine-mesh traveling screens and fish return systems. With regard to entrainment reduction, these technologies include the following: (1) Aquatic filter barrier systems, (2) fine-mesh wedgewire screens, and (3) fine-

mesh traveling screens with fish return systems. Because EPA based the performance standards on a combination of technologies and because of the uncertainty inherent in predicting the efficacy of one or more of these technologies as applied to different facilities, EPA promulgated these standards as ranges. Furthermore, because the site-specific performance was based on a comparison to a once-through system without any specific controls on the shoreline near the source waterbody (i.e., calculation baseline, for more details see Section III.B.1 of the preamble to the proposed rule, 76 FR 22185, April 20, 2011), the rule also allowed facilities to receive credit toward meeting the performance standards for impingement and entrainment reduction associated with alternative locations of their intakes (e.g., deep water where fish and shellfish were less abundant).

The types of performance standard applicable to a facility (i.e., reductions in impingement mortality only or both impingement mortality and entrainment) were based on several factors, including the facility's location (i.e., source waterbody), rate of use (capacity utilization rate), and the proportion of the waterbody withdrawn.

The 2004 Phase II rule identified five compliance alternatives to meet the performance standards. A facility could demonstrate to the Director one of the following: (1) That it has already reduced its flow commensurate with a closed-cycle recirculating system (to meet both impingement mortality and entrainment), or that it has already reduced its maximum through-screen velocity to 0.5 fps or less (to meet the impingement performance standard only); (2) that its cooling water intake structure configuration meets the applicable performance standards; (3) that it has selected design and construction technologies, operational measures, and/or restoration measures that, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the applicable performance standards; (4) that it meets the applicability criteria and has installed and is properly operating and maintaining a rule-specified and/or approved State-specified design and construction technology (i.e., submerged cylindrical wedgewire screens) in accordance with § 125.99(a) or an alternative technology that meets the appropriate performance standards and is approved by the Director in accordance with § 125.99(b); or (5) that its costs of compliance would be significantly greater than either the costs considered by the Administrator for a like facility to meet the applicable performance standards, or the benefits of meeting the applicable performance standards at the facility. Under the cost-cost comparison alternative, a Director could determine that the cost of compliance for a facility would be significantly greater than the costs considered by EPA in establishing the applicable impingement mortality and entrainment performance standards. Similarly, under the cost-benefit comparison alternative, a Director could determine that the cost of compliance for a facility would be significantly greater than the benefits of complying with the applicable performance standards. If either of these determinations were made, the Director would have to make a site-specific determination of BTA for minimizing adverse environmental impact that came as close as practicable to meeting the applicable performance standards at a cost that did not significantly exceed either the costs EPA considered in establishing these standards or the site-specific benefits of meeting these standards.

The final 2004 Phase II rule also provided that a facility that chooses specified compliance alternatives might request that compliance with the requirements of the rule be determined on the basis of implementing a Technology Installation and Operation Plan (TIOP) that would indicate how the facility would install and ensure the efficacy, to the extent practicable, of design and construction technologies, and/or operational measures, and/or a Restoration Plan. The rule also established requirements for developing and submitting a TIOP (§ 125.95(b)(4)(ii)) and provisions that specified how compliance could be determined on the basis of implementing a TIOP (§ 125.94(d)). Under these provisions, a TIOP could be requested in the first permit term, and continued use of a TIOP could be requested where a facility was in compliance with such plan and/or its Restoration Plan.

ii. Subsequent Litigation

Industry, environmental stakeholders, and some States [20] challenged many aspects of the 2004 Phase II regulations. On January 25, 2007, the Second Circuit (*Riverkeeper, Inc.* v. *EPA,* 475 F.3d 83, (2d Cir., 2007)) upheld several provisions of the 2004 Phase II rule and remanded others to EPA for further rulemaking.

As noted above, for the 2004 Phase II rule EPA did not select closed-cycle cooling as BTA. Instead, EPA selected a suite of technologies to reflect BTA, including, for example, screens, aquatic filter barriers, and barrier nets. According to the chosen technologies, EPA established national performance standards for reducing impingement mortality and entrainment of fish and fish organisms but did not require the use of any specific technology. Among the aspects of the rule the Second Circuit remanded for further clarification was EPA's decision to reject closed-cycle cooling as BTA and EPA's determination of performance ranges as BTA. In addition, the Second Circuit found that, consistent with its Phase I decision, restoration was not authorized under the CWA as a technology for BTA and that EPA's cost-benefit site-specific compliance alternative was not in accord with the CWA. There are also several issues for which the court requested additional clarification and some instances where the court determined that EPA had failed to provide adequate notice and opportunity to comment on certain provisions of the rule.

iii. Suspension

As a result of the decision in *Riverkeeper, Inc.* v. *EPA,* 475 F.3d 83, (2d Cir., 2007), EPA, on July 9, 2007 (72 FR 37107) suspended the requirements for cooling water intake structures at 2004 Phase II existing facilities, pending further rulemaking. Specifically, EPA suspended the provisions in § 122.21(r)(1)(ii) and (r)(5), and part 125 Subpart J, with the exception of § 125.90(b). EPA explained that suspending the 2004 Phase II requirements was an appropriate response to the Second Circuit's decision and that such action would allow it to consider how to respond to the remand. In addition, suspending the 2004 Phase II rule was responsive to the concerns of the regulated community and permitting agencies, both of whom sought guidance regarding how to proceed in light of the approaching deadline for compliance with the remanded rule. EPA's suspension clarified that pending further rulemaking, permit requirements for cooling water intake structures at 2004 Phase II facilities should be established on a case-by-case, BPJ basis (see § 125.90(b)).

iv. Supreme Court Decision

Following the decision in the Second Circuit, several industry group litigants

[20] Rhode Island, Connecticut, Delaware, Massachusetts, New Jersey, and New York.

petitioned the U.S. Supreme Court to hear an appeal regarding several issues in the case. *Entergy Corp.* v. *Riverkeeper, Inc. et al., S. Ct. No. 07–588, et al.* On April 14, 2008, the Supreme Court granted the petitions for writs of certiorari submitted by these 2004 Phase II litigants, but it limited its review to the issue of whether section 316(b) authorizes EPA to compare costs with benefits in determining BTA for cooling water intake structures. The Supreme Court held oral arguments in this case on December 2, 2008, and issued a decision on April 1, 2009. As explained above, the Supreme Court held that it is permissible for EPA to rely on cost-benefit analysis in decision making. The court indicated that the phrase ''best technology available for minimizing adverse environmental impact'' does not unambiguously preclude use of cost-benefit analysis in decision making. 566 U.S. at 223(2009). The ruling supports EPA's discretion to consider costs and benefits, but it imposes no obligation on the Agency to do so.

d. Phase III—Existing Power Plants Below 50 mgd, Existing Manufacturing Facilities, and New Offshore Oil and Gas Facilities

i. Rulemaking

On June 16, 2006, EPA published a final Phase III rule that established categorical regulations for new offshore oil and gas extraction facilities that have a DIF threshold of greater than 2 mgd and that withdraw at least 25 percent of the water exclusively for cooling purposes on an actual intake flow basis. The rule establishes requirements that address intake velocity, proportionate flow for sensitive locations, design and construction technologies or operational measures, monitoring and recordkeeping, based on if a facility employs a sea chest or not, and is fixed or not. Like the Phase I rule, this rule includes a Track II. In the Phase III rule, EPA declined to establish national standards for Phase III existing facilities. Instead it concluded that CWA section 316(b) requirements for electric generators with a DIF of less than 50 mgd and all existing manufacturing facilities would continue to be established on a case-by-case basis under the NPDES permit program using BPJ. (71 FR 35006, June 16, 2006).

ii. Subsequent Litigation

Following promulgation of the rule, a number of parties filed petitions for review that were subsequently consolidated for hearing in the U.S. Court of Appeals for the Fifth Circuit. In 2009, EPA petitioned the Fifth Circuit to remand to the Agency those parts of the rule that applied to existing facilities. Specifically, EPA requested remand of those provisions in the Phase III rule that establish 316(b) requirements at electric generators with a DIF of less than 50 mgd, and the provision establishing requirements for existing manufacturing facilities on a case-by-case basis using BPJ. This request did not affect the Phase III rule requirements that establish categorical regulations for new offshore oil and gas extraction facilities that have a DIF threshold of greater than 2 mgd and that withdraw at least 25 percent of the water exclusively for cooling purposes on an actual intake flow basis.

On July 23, 2010, the U.S. Court of Appeals for the Fifth Circuit issued a decision affirming the parts of Phase III rule relating to new offshore oil and gas facilities. The court granted EPA's motion to remand the rule with respect to existing facilities. In sustaining the requirements for new offshore oil and gas facilities, the Fifth Circuit upheld EPA's decision not to use cost benefit balancing in determining the requirements for these new facilities.

III. Environmental Effects Associated With Cooling Water Intake Structures

A. Introduction

Multiple types of adverse environmental effects may be associated with CWIS operations at regulated facilities. Many facilities employ once-through cooling water systems that impinge fishes and other aquatic organisms on intake screens. Impinged organisms may be killed, injured, or weakened. In addition, early life stage fish or planktonic organisms can be entrained by the CWIS and subjected to high velocity and pressure, increased temperature, and chemical anti-biofouling agents in the system. These factors are highly lethal in most cases, as early life stages of larvae are highly sensitive and very unlikely to survive entrainment. Even if an organism is entrained as an egg and survives, its chances of surviving beyond the larvae stage are dramatically lower than eggs that were never entrained. Thus, unless measures to protect larvae are in place, egg survival does not indicate that adverse environmental impacts have been avoided. Consistent with its treatment of entrainment in past 316(b) rules, EPA assumes for the purposes of a national rule that 100 percent of entrained organisms suffer mortality.

The effects of CWIS on aquatic habitats and biota in the waterbody do not occur in isolation from other ongoing physical, chemical, and biological stressors. Anthropogenic stressors may include: Degraded water and sediment quality, low dissolved oxygen (DO) levels, eutrophication, fishing, channel or shoreline (habitat) modification (intake structure and other flood or storm controls), hydrologic regime changes and invasive species. For example, many aquatic organisms subject to IM&E (impingement mortality and entrainment) reside in impaired (i.e., CWA 303(d) listed) waterbodies. The effects of anthropogenic stressors on biota may contribute to or compound the impact of IM&E, depending on the influence of location-specific factors. In addition to stressors acting on biota near a single CWIS, multiple CWISs and facilities located in close proximity on the same waterbody may have additive or cumulative effects on aquatic communities. And, although it is difficult to measure, the compensatory ability of an aquatic population, which is the capacity for a species to increase survival, growth, or reproduction rates in response to decreased population, is likely compromised by IM&E and the cumulative impact of other stressors in the environment over extended periods of time.

B. Major Anthropogenic Stressors in Aquatic Ecosystems

All ecosystems and their biota are subject to natural variability in environmental conditions (e.g., seasonal cycles, foliage presence) as well as periodic large-scale disturbances (e.g., drought, flood, fire). In contrast, anthropogenic stressors tend to be more chronic in nature and can often lead to long-term environmental degradation associated with decreased biodiversity, reduced primary and secondary production, and a lowered ecosystem resiliency (i.e., ability of the ecosystem to recover to its original state from perturbations).[21] Several of the more important anthropogenic stressors are discussed below, with CWIS-related impacts considered as a separate category of stress.

1. Habitat Loss

Structural aquatic habitat is generally recognized as the most significant determinant of the nature and composition of aquatic communities. Most 316(b) facilities have been built on shoreline locations where industrial buildings, roadways, canals, impoundments, and other water storage or conveyance structures have been

[21] Rapport, D. J., & Whitford, W. G. (1999). How Ecosystems Respond to Stress. BioScience, 49(3), 193–203. See DCN 10–4871.

constructed at the cost of terrestrial, aquatic, and wetland habitats. The main impacts of aquatic habitat loss are a reduction in the number of fish in the environment, a concentration of fishery spawning and nursery areas in fewer locations, shifts in species dominance based on available habitat and local extirpation of historical fish species. Habitat loss in shoreline areas exacerbates the effect of CWIS losses because many fish species affected by IM&E rely heavily on coastal wetlands as nursery areas.

2. Water Quality and Impaired Waters

Poor water quality is a major stressor of aquatic biota and habitats. Degraded surface water and sediment contaminants reflect both current and past industrial, agricultural and urban land use and disposal practices. Poor water quality can limit the numbers, composition, and distribution of fish and invertebrates; reduce spawning effort and growth rates; select for pollution-tolerant species; cause periodic fishkills; or result in adverse bioaccumulative effects to piscivorous wildlife.

EPA has determined that the majority of surveyed facilities, including 71 percent of electric generators and 79 percent of sampled manufacturing facilities, are within two miles of an impaired (i.e., CWA section 303(d)-listed) waterbody.[22] These impairments are caused by a variety of chemical, physical, and biological factors. These factors include biological stressors, nutrients, organic enrichment/loading, bioaccumulation, toxics, unknown causes, and other forms of anthropogenic sources of pollution (e.g., atmospheric deposition of mercury leading to fish advisories). The combined impacts of impaired water quality may result in highly degraded or altered aquatic communities that are further impaired by IM&E associated with the operation of regulated facilities.

3. Overharvesting

Overharvesting is a general term describing the exploitation of an aquatic population beyond a level that is sustainable, sometimes to the point of significantly reducing the population relative to historic levels. Given that many fisheries regulated by the National Marine Fisheries Service (NMFS) are overfished on a continual basis, overharvesting is a particular problem for stocks also subject to IM&E.

4. Invasive Species

Non-indigenous invasive species (NIS) are a significant and increasingly prevalent stressor in both freshwater and marine environments. Approximately 300 NIS have become established in marine and estuarine habitats of the continental U.S., and the number of NIS continues to increase. Many NIS are nuisance species with undesirable effects on local communities.[23] For example, interactions between NIS and other anthropogenic stressors can affect the colonization and distribution of native species subject to CWIS impacts.

C. Effects of CWIS on Aquatic Ecosystems

The magnitude and regional importance of IM&E is a function of operational CWIS intake volumes and characteristics of the aquatic community in the region. Thus, for example, IM&E can contribute to impacts on threatened and endangered (T&E) species and reduce populations of ecologically critical aquatic organisms, including important organisms in an ecosystem's food web. In addition, IM&E may diminish the compensatory reserves of populations and reduce indigenous species populations, commercial fisheries, and recreational fisheries. Further, IM&E may stress overall communities and ecosystems, as evidenced by reductions in diversity or other changes in ecosystem structure or function. The direct and indirect impacts of CWIS may reduce other valuable ecosystem goods and services, including nutrient cycling and ecosystem stability.

1. Losses of Fish From Impingement Mortality and Entrainment

The most visible direct impacts of IM&E are the losses of large numbers of aquatic organisms, distributed non-uniformly among fish, benthic invertebrates, phytoplankton, zooplankton, and other susceptible aquatic taxa (e.g., sea turtles). These losses have immediate and direct effects on the population size and age distribution of affected species, and may cascade through food webs.

In some cases, IM&E has been shown to be a significant source of anthropogenic mortality of depleted stocks of commercially targeted species. For example, approximately 5.4 percent of the estimated A1E population of the Southern New England/Massachusetts stock of winter flounder (*Pseudopleuronectes americanus*) is lost to IM&E.[24] In addition to its effect on stocks of marine commercial fish species, IM&E increases the pressure on native freshwater species, such as lake whitefish (*Coregonus clupeaformi*) and yellow perch (*Perca flavescens*), whose populations have seen dramatic declines in recent years.[25]

IM&E is also likely to contribute to reduced population sizes of species targeted by commercial and recreational fishers, particularly for stocks that are being harvested at unsustainable levels and/or undergoing rebuilding. Thus, reducing IM&E may lead to more rapid stock recovery, a long-term increase in commercial fish catches, increased population stability following periods of poor recruitment and, as a consequence of increased resource utilization, an increased ability to minimize the invasion of exotic species.[26]

2. IM&E Effects on Threatened and Endangered Species

Populations of T&E (threatened and endangered) species may suffer increased mortality as direct or indirect consequences of IM&E. T&E species are vulnerable to future extinction or at risk of extinction in the near future and IM&E losses could either lengthen population recovery time, hasten the demise of these species, or counteract the effects of other conservation efforts. For this reason, the population-level and societal values of T&E losses are likely to be considered more important than the absolute number of losses that occur. Due to low population sizes, I&E mortality from CWISs may represent a substantial portion of the annual reproduction of T&E species.

3. Thermal Effects

One byproduct of once-through cooling water systems is a discharge of a heated effluent. Concerns about the impacts of heated effluents are

[22] Abt Associates, Inc. (2010). Source Water Body Comparisons (Under Work Assignment 2–09, Task 4) (pp. 13). Cambridge, MA. See DCN 10–4504.

[23] Ruiz, G. M., Fofonoff, P. W., Carlton, J. T., Wonham, M. J., & Hines, A. H. (2000). Invasion of Coastal Marine Communities in North America: Apparent Patterns, Processes, and Biases. Annual Review of Ecology & Systematics, 31, 481–531. See DCN 10–4880.

[24] Northeast Fisheries Science Center (NEFSC) of the NOAA National Marine Fisheries Service. (2011). 52nd Northeast Regional Stock Assessment Workshop (52nd SAW): Assessment Summary Report. DCN 12–4940.

[25] U.S. Department of the Interior (USDOI). (2004). Fisheries: Aquatic and Endangered Resources from *http://www.glsc.usgs.gov/main.php?content=research_risk&title=Species%20at%20Risk0&menu=research* [Retrieved June 23, 2004]; Wisconsin Department of Natural Resources (Wisconsin DNR). (2003). Adrift on the sea of life. Wisconsin Natural Resources, June, 17–21. See DCN 10–4914.

[26] Stachowicz, J. J., & Byrnes, J. E. (2006). Species Diversity, invasion success, and ecosystem functioning: disentangling the influence of resource competition, facilitation, and extrinsic factors. Marine Ecology—Progress Series, 311, 251–262. See DCN 10–4892.

addressed by state water quality standards addressing temperature, rather than a national rule. Section 316(a) of the Clean Water Act provides a mechanism for variances from controls that could be imposed due to thermal effects. Based on a limited review of NPDES permits, to the extent that facilities have controls on cooling water intake structures, these controls have been required to meet water quality standards related to temperature.[27]

Thermal pollution has long been recognized as having multiple effects upon the structure and function of ecosystems.[28] Numerous studies have shown that thermal discharges may substantially alter the structure of the aquatic community by modifying photosynthetic, metabolic, and growth rates [29] and reducing levels of DO. Thermal pollution may also alter the location and timing of fish behaviors including spawning, aggregation, and migration, and may result in thermal shock-induced mortality for some species.[30] Adverse temperature effects are likely to be more pronounced in aquatic ecosystems that are already subject to other environmental stressors such as high biochemical oxygen demand (BOD) levels, sediment contamination, and pathogens. Reduced waterbody volume due to the effects of climate change and/or lengthy droughts could exacerbate these effects.

4. Chemical Effects

The release of chemicals in the discharge of once-through cooling waters is another environmental effect associated with industrial facility operations. These chemicals include metals from internal corrosion of pipes, valves and pumps (e.g., chromium, copper, iron, nickel, and zinc), additives (anti-corrosion and anti-scaling agents) and their byproducts, and materials from boiler blowdown and cleaning cycles. In addition to these pollutants, facilities also discharge anti-fouling biocide agents.

A review of the effects of chemical treatment and discharge into the environment suggests that direct ecotoxicity in discharge plumes is rarely observed beyond the point of discharge or in a mixing zone near the pipe outlet.[31] However, the presence of these chemicals in the receiving water may be additive to low-level chronic adverse effects from other anthropogenic stressors identified above.

5. Effects of Flow Alteration

The operation of CWISs and discharge returns significantly alter patterns of flow within receiving waters both in the immediate area of the CWIS intake and discharge pipe, and in mainstream waterbodies, particularly in inland riverine settings. In ecosystems with strongly delineated boundaries (i.e., rivers, lakes, enclosed bays, etc.), CWISs may withdraw and subsequently return a substantial proportion of water available to the ecosystem. Even in situations when the volume of water downstream of regulated facilities changes relatively little, the flow characteristics of the waterbody, including turbulence and water velocity, may be significantly altered.

Altered flow velocities and turbulence may lead to several changes in the physical environment. These changes can include sediment deposition, sediment transport, and turbidity, each of which plays a role in the physical structuring of ecosystems.[32] Flow velocity and turbulence are controlling biological factors in aquatic ecosystem health, and have been shown to alter feeding rates, settlement and recruitment, bioturbation, growth and population dynamics.[33]

Climate change is predicted to have variable effects on future river flow in different regions of the United States. Some rivers are expected to have large increases in flood flows while other basins will experience stress from low water levels. Thus, the adverse effects of flow alteration may increase or decrease over longer periods for larger rivers, depending on their location.

D. Community-Level or Indirect Effects of CWIS

In addition to the direct effects of CWISs, IM&E may alter a wide range of aquatic ecosystem functions and services at the community level. Many of these effects on aquatic community function and service are poorly characterized, given the limited scope of IM&E studies and an incomplete knowledge of baseline or pre-operational conditions within affected waters.

The operation of CWISs by facilities can lead to localized areas of depressed fish and shellfish abundance. Industrial facilities (and the intake volume they represent) are located in a non-uniform manner along coastlines and rivers. They may be clustered, such that the populations affected by IM&E are geographically heterogeneous. This can result in a highly localized and patchy distribution of aquatic organisms in regional areas.

IM&E may directly reduce species populations through the death of individual organisms, or may indirectly affect species populations by altering established predator-prey relationships and thereby disrupting ecological niches and food webs. For example, the loss of young-of-year predators, such as striped bass, or loss of important forage fish, such as menhaden and bay anchovy, may affect trophic relationships and alter food webs. IM&E may lead to reductions in local community biodiversity or in a loss of genetic diversity in individual fish populations. Because IM&E represents a selective pressure on early life stages, it may reduce the genetic diversity of resident fish and prevent the recovery of depleted stocks.[34] Also, because many stocks are differentiated by oceanic region and/or timing of migratory movements, IM&E could alter the seasonal migration and life cycle events of fish populations, which could have ramifications for predator species.

IM&E may also alter the pace of nutrient cycling and energy transfer through food webs. Fish species have been shown to have substantial effects on nitrogen, phosphorous, and carbon cycling due to storage and translocation effects.[35] These alterations in nutrient cycling could lead to redirection of nutrient flows to other components of the ecosystem including water column phytoplankton, benthic macroalgae and attached epiphytes, with subsequent changes to the condition of critical

[27] Abt Associates, Inc. (2010). Source Water Body Comparisons (Under Work Assignment 2–09, Task 4) (pp. 13). Cambridge, MA. See DCN 10–4504.

[28] Abt Associates, Inc. (2009). Summary of Ecological Effects of Thermal Discharge (pp. 28). Cambridge, MA. See DCN 10–4505.

[29] Martinez-Arroyo, A., Abundes, S., González, M. E., & Rosas, I. (2000). On the Influence of Hot-Water Discharges on Phytoplankton Communities from a Coastal Zone of the Gulf of Mexico. Water, Air & Soil Pollution, 119(1–4), 209–230. See DCN 10–4820.

[30] Smythe, A. G., & Sawyko, P. M. (2000). Field and laboratory evaluations of the effects of 'cold shock' on fish resident in and around a thermal discharge: an overview. Environmental Science & Policy, 3(S1), 225–232. See DCN 10–4887.

[31] Taylor, C. J. L. (2006). The effects of biological fouling control at coastal and estuarine power stations. Marine Pollution Bulletin, 53(1–4), 30–48. See DCN 10–4901.

[32] Hoyal, D. C. J. D., Atkinson, J. F., Depinto, J. V., & Taylor, S. W. (1995). The effect of turbulence on sediment deposition. Journal of Hydraulic Research, 33(3), 349–360. See DCN 10–4797.

[33] Sanford, E. B., Bertness, D., & M. D. Gaines, S. D. (1994). Flow, food supply and acorn barnacle population dynamics. Marine Ecology Progress Series, 104, 49–62. See DCN 10–4882.

[34] Swain, D. P., Sinclair, A. F., & Mark Hanson, J. (2007). Evolutionary response to size-selective mortality in an exploited fish population. Proceedings of the Royal Society B: Biological Sciences, 274(1613), 1015–1022. See DCN 10–4900.

[35] Vanni, M. J., Layne, C. D., & Arnott, S. E. (1997). ''Top-down'' trophic interactions in lakes: effects of fish on nutrient dynamics. Ecology, 78(1), 1–20. See DCN 12–5047.

ecosystem habitats, such as submerged aquatic vegetation.

The effect of long-term or chronic IM&E may lead to a decrease in ecosystem resistance and resilience [36] (i.e., ability to resist and recover from disturbance, including invasive species). That is, IM&E is likely to reduce the ability of ecosystems to withstand and recover from these ecosystem damages, whether those impacts are due to anthropogenic effects or natural variability.

E. Cumulative Effects of Multiple Facilities

Cumulative effects of CWISs are likely to occur if multiple facilities are located in close proximity and impinge or entrain aquatic organisms within the same source waterbody, watershed system, or along a migratory pathway of a specific species (e.g., striped bass in the Hudson River). EPA analyses show more than 20 percent of all facilities on inland waters withdraw more than 5 percent of the mean annual flow.[37] See TDD Chapter 4.1.3 for detailed discussion. This impact is compounded because more than half of all regulated facilities are located on waterbodies with multiple CWISs. An inspection of the geographic locations of regulated facilities (approximated by CWIS latitude and longitude) shows that facilities in inland settings are more likely to be located in close proximity to other facilities (upstream or downstream) than are facilities in marine and estuarine environments. The cumulative impact of clustered facilities may be significant, due to the concentrated IM&E, combined intake flows, and the potential for other impacts such as thermal discharges.

IV. Summary Description of the Final Rule

Under today's final rule, the owners or operators of existing facilities and new units at existing facilities are subject to BTA standards for impingement mortality and entrainment that are expected to substantially reduce the adverse environmental impacts of cooling water intake structures. Earlier, in Section I, the preamble describes what facilities are subject to the rule. The discussion below presents an overview of the substantive requirements of the rule.

A. BTA Standard for Impingement Mortality for Existing Units at Existing Facilities

The final rule requires that existing facilities subject to this rule must comply with one of the following seven alternatives identified in the national BTA standard for impingement mortality at § 125.94(c) (hereafter, impingement mortality standards):

(1) Operate a closed-cycle recirculating system as defined at § 125.92;

(2) operate a cooling water intake structure that has a maximum through-screen design intake velocity of 0.5 fps;

(3) operate a cooling water intake structure that has a maximum through-screen intake velocity of 0.5 fps;

(4) operate an offshore velocity cap as defined at § 125.92 that is installed before October 14, 2014;

(5) operate a modified traveling screen [38] that the Director determines meets the definition at § 125.92(s) and that the Director determines is the best technology available for impingement reduction;

(6) operate any other combination of technologies, management practices and operational measures that the Director determines is the best technology available for impingement reduction; or

(7) achieve the specified impingement mortality performance standard.

Options (1), (2) and (4) above are essentially pre-approved technologies requiring no demonstration or only a minimal demonstration that the flow reduction and control measures are functioning as EPA envisioned. Options (3), (5) and (6) require more detailed information be submitted to the Director before the Director may specify it as the requirement to control impingement mortality.

In the case of Option (3), which EPA considers to be a streamlined alternative, the facility must submit information to the Director that demonstrates that the maximum intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh does not exceed 0.5 feet per second.

In the case of Option (5), the facility must submit a site-specific impingement technology performance optimization study that must include two years of biological sampling demonstrating that the operation of the modified traveling screens has been optimized to minimize impingement mortality. As discussed below, if the facility does not already have this technology installed and chooses this option, the Director may postpone this study till the screens are installed (see VI.G.1.d below).

In the case of Option (6), the facility must submit a site-specific impingement study including two years of biological data collection demonstrating that the operation of the system of technologies, operational measures and best management practices has been optimized to minimize impingement mortality. If this demonstration relies in part on a credit for reductions in the rate of impingement already achieved by measures taken at the facility, an estimate of those reductions and any relevant supporting documentation must be submitted. The estimated reductions in rate of impingement must be based on a comparison of the system to a once-through cooling system with a traveling screen whose point of withdrawal from the surface water source is located at the shoreline of the source waterbody.

The impingement mortality performance standard in (7) requires that a facility must achieve a 12-month impingement mortality performance of all life stages of fish and shellfish of no more than 24 percent mortality, including latent mortality, for all non-fragile species that are collected or retained in a sieve with maximum opening dimension of 0.56 inches [39] and kept for a holding period of 18 to 96 hours. The Director may, however, prescribe an alternative holding period. The 12-month average of impingement mortality is calculated as the sum of total impingement mortality for the previous 12 months divided by the sum of total impingement for the previous 12 months. A facility must choose to demonstrate compliance with this requirement for the entire facility, or for each individual cooling water intake

[36] Folke, C., Carpenter, S., Walker, B., Scheffer, M., Elmqvist, T., Gunderson, L., & Holling, C. S. (2004). Regime Shifts, Resilience, and Biodiversity in Ecosystem Management . . . Annual Review of Ecology, Evolution, & Systematics, 35(1), 557–581. See DCN 10–4770.

[37] As described in the Phase I proposed rule (65 FR 49060) and the Phase II NODA (66 FR 28853), absent any other controls, withdrawal of a unit volume of water from a waterbody will result in the entrainment of an equivalent unit of aquatic life (such as eggs and larval organisms) suspended in that volume of the water column. Thus, facilities withdrawing greater than 5 percent of the mean annual flow from freshwater rivers and streams may entrain equal proportions of aquatic organisms.

[38] EPA is aware that innovative screen designs are currently being tested that are expected to provide similar or better performance than modified Ristroph traveling screems. Therefore EPA has defined modified traveling screen at 40 CFR 125.92 to mean any traveling water screen that incorporates the specified measures that are protective of fish and shellfish. In this preamble, modified traveling water screen with a fish handling and return system is often referred to more simply a modified traveling screen.

[39] Though less common, the EPA recognizes that ½ by ¼ inch mesh are used in some instances and perform comparably to the ⅜ inch square mesh. Therefore, today's rule allows for facilities to apply a ½ by ¼ inch sieve (diagonal opening of 0.56 inches) or a ⅜ inch sieve (diagonal opening of 0.53 inches) when discerning between impinged and entrained organisms.

structure. Biological monitoring must be completed at a minimum frequency of monthly.

The owner or operator of an existing facility must meet the impingement mortality requirements as soon as practicable after issuance of a final permit establishing the entrainment requirements under § 125.94(d).

Today's final rule also allows the Director, based on review of site-specific data, to conclude that a de minimis rate of impingement exists and therefore no additional controls are warranted to meet the BTA impingement mortality standard. In addition, today's final rule allows the Director flexibility in determining appropriate site-specific controls that may be less stringent than those found at § 125.94(c)(1) to (7) for existing units at existing facilities operating with a capacity utilization of less than 8 percent averaged over a 24-month block contiguous period. This provision can be found at § 125.94(c)(12). EPA notes that these provisions for impingement mortality would not apply to entrainment because, as discussed in the next section, the requirements for entrainment are established by the Director on a site-specific basis.

B. BTA Standard for Entrainment for Existing Units at Existing Facilities

The final rule establishes the national BTA standard for entrainment at existing units at existing facilities at § 125.94(d) (hereafter, entrainment standards). For such units, the rule does not prescribe a single nationally applicable entrainment performance standard but instead requires that the Director must establish the BTA entrainment requirement for a facility on a site-specific basis. The requirements must reflect the Director's determination of the maximum reduction in entrainment warranted after consideration of all factors relevant to the BTA determination at the site and must include consideration of the specific factors spelled out in § 125.98(f)(2). Facilities that withdraw greater than 125 mgd AIF must develop and submit an Entrainment Characterization Study (§ 122.21(r)(9)), as well as provide other information required at § 122.21(r)(7) and (10), (11), (12) and (13) that must include specified data pertinent to consideration of several of the factors identified in § 125.98(f).

C. BTA Standards for Impingement Mortality and Entrainment for New Units at Existing Facilities

The owner or operator of a new unit at an existing facility must achieve one of two compliance alternatives under the national BTA standards for impingement mortality and entrainment for new units at existing facilities at § 125.94(e) (hereafter, new unit standards).[40] Under the new unit standards, the owner or operator of a facility must reduce AIF at the new unit, at a minimum, to a level commensurate with that which can be attained by the use of a closed-cycle recirculating system as defined at § 125.92(c)(1). The owner or operator of a facility with a cooling water intake structure that supplies cooling water exclusively for operation of a wet or dry cooling tower(s) and that meets the definition of closed-cycle recirculating system at § 125.92(c)(1) meets this new unit standard. Under the alternative new unit standard, the owner or operator of a facility must demonstrate to the Director that it has installed, and will operate and maintain, technological or other control measures that reduce the level of adverse environmental impact from any cooling water intake structure used to supply cooling water to the new unit to a comparable level to that which would be achieved through flow reductions commensurate with the use of a closed-cycle recirculating system. Under this alternative, the owner or operator of a facility must demonstrate entrainment mortality reductions that are equivalent to 90 percent or greater of the reduction that could be achieved through compliance with the first alternative entrainment standard for new units.

The new unit entrainment standards do not apply to certain water withdrawals including (1) cooling water used by manufacturing facilities for contact cooling purposes; (2) portions of those water withdrawals for auxiliary cooling uses totaling less than 2 mgd; (3) any volume of cooling water withdrawals used exclusively for make-up water at existing closed-cycle recirculating systems;[41] and (4) any quantity of emergency back-up water flows. Furthermore, as is the case for existing units, obtaining cooling water from a public water system, using reclaimed water from wastewater treatment plants, or desalination plants, or using recycled process wastewater effluent as cooling water does not constitute use of a cooling water intake structure. The new unit requirements apply only to the volume of cooling water used by the new unit, or to the cooling water intake structures used by the new unit. The new unit requirements do not apply to the rest of the existing facility.

In addition, the Director may establish alternative entrainment requirements for new units when compliance with the new unit entrainment standards would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at issue or will result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, adverse impacts on threatened and endangered species, or significant adverse impacts on local energy markets. Any Director-specified alternative must achieve a level of performance as close as practicable to the requirements of § 125.94(e)(1) or (2).

D. Other Provisions

The final rule contains a number of other provisions related to the BTA impingement and entrainment reduction requirements. For example, the rule also provides that the Director may establish more stringent requirements as BTA if the Director determines that the facility owner or operator's compliance with the requirements otherwise established under the final rule would not meet the requirements of applicable State and Tribal law, including water quality standards. 40 CFR 125.94(i). Today's rule also requires the owner or operator of a facility subject to this subpart to submit and retain permit application and supporting information as specified in § 125.95; monitor for compliance as specified in § 125.96; and report information and data and keep records as specified in § 125.97. Director requirements are specified in § 125.98.

The rule further provides that, in the case of a nuclear facility or a facility constructing or conducting maintenance on nuclear powered vessels of the Armed Services, if the owner or operator of the facility demonstrates to the Director, upon the Director's consultation with the Nuclear Regulatory Commission, the Department of Energy or the Naval Nuclear Propulsion Program, that compliance with this subpart would result in a conflict with a safety requirement established by these entities, the

[40] EPA expects that all new units will comply with these requirements through the installation of a closed-cycle cooling system, which is one of the most effective technologies for reducing impingement and impingement mortality. Therefore, the IM requirements for new units are already addressed by the new unit requirements by virtue of the first compliance alternative of the IM performance standard.

[41] For facilities with a combination of closed-cycle recirculating systems and other cooling water systems, the entrainment mortality standard does not apply to that portion of cooling water withdrawn as make-up water for the closed-cycle recirculating system.

Director must establish BTA requirements that would not result in a conflict with the Commission's, the Department's or the Naval Nuclear Propulsion Program's safety requirement.

V. Summary of Data Updates and Revisions to the Proposed Rule

This description of revisions to the proposed rule is organized in three sections: Data updates, regulatory approach and compliance, and new units. EPA published two NODAs (Notice of Data Availability) (77 FR 34315, June 11, 2012 and 77 FR 34927, June 12, 2012) based on some comments received on the proposed rule and additional analyses. EPA also took public comment on the information in these notices.

A. Data Updates

On the basis of comments received, additional information made available, and further analyses, EPA revised a number of assumptions used in its assessments for the final rule. These included revisions to the engineering costs of options considered in development of the final rule, the information collection costs, the economic analyses, and the benefits analyses. The revised analyses, along with an explanation of how they affected decision making for this final rule, are discussed below.

1. Impingement Data and Performance Standard

Since publishing the proposal, EPA received a substantial number of comments stating the amount of data to develop the proposed impingement mortality performance standard was too limited. EPA received more than 80 additional documents containing impingement and entrainment data. EPA reviewed these materials and found that many documents did not provide useful data. For example, in some cases, a document did not provide useful information because the only data available were the facility name and raw sampling data for a number of different species of fish or shellfish, or both. In other cases, the documents focused on source water characterization data alone. However, after review, EPA identified more than 40 distinct sets of additional impingement sampling and performance data.

EPA also reevaluated and revised the criteria it used for including impingement mortality study data in the impingement mortality performance standard calculations. In calculating the impingement mortality performance standard of § 125.94(c)(7), EPA applied these revised criteria for acceptable data to both the new data and the earlier data used for proposal. EPA's approach for the final rule is similar to that of the proposal. In order to include data in EPA's calculation, for the proposal, EPA applied the following four criteria. First, the data must be specific to the technology under consideration. Second, impingement mortality must have been reported as an absolute number or a percentage of impinged fish that were killed. Third, the data must reflect that the installed technology was operated under conditions that are representative of actual conditions at a facility, and fourth, the reported values must be actual measurements. EPA based the proposed performance standard on the performance of modified traveling screens with a fish return system using a limited definition of the control technology.

In its reevaluation and based on comments, EPA decided to revise some of the criteria and add two new ones. In some cases, the effect of these changes is to relax the criteria and in others, to impose more restrictive criteria. First, all impingement data must be for non-fragile species (including shellfish). Second, the data must be representative of annual mortality data for purposes of deriving an annual performance standard. EPA notes that in contrast to the proposed rule, the permit application does not require submission of the proposed list of ''species of concern.'' EPA found that the term ''species of concern'' was similar to terms used in the context of T&E (threatened and endangered) species, and may further cause confusion over existing Services or State requirements for such species. Further, despite EPA's efforts to distinguish between species of concern and RIS (representative indicator species) in the NODA (77 FR 34325, June 11, 2012), EPA found that many commenters were still confused by the language. Instead, EPA is adopting the term ''fragile species'' and using the term exactly as it is used with the impingement mortality data and criteria used in calculating the impingement mortality performance standard of the rule. EPA included a definition for ''fragile species'' at § 125.92(m), as a species of fish or shellfish that has an impingement survival rate of less than 30 percent. EPA took this approach to ensure that a facility's performance in reducing impingement mortality as demonstrated by collecting biological data would reflect only the effects of its improvements to the CWIS technology, and not be confounded by effects of data collection that are not caused by impingement.

EPA also relaxed the holding time criteria as a result of reevaluating the range of acceptable impingement mortality holding times, which at proposal was limited to 24 to 48 hours. After evaluating the data, EPA concluded that a range of holding times of 18 to 96 hours was acceptable for inclusion in the development of a performance standard because commenters had provided documentation showing that the actual time period typically had little effect on IM rates. At proposal, EPA counted all fish that died at any time during the holding period. For the final rule being promulgated today, EPA excludes those that were dead at time zero because such counts measured immediate deaths and not those organisms that were mortally harmed as a result of impingement. These counts also might reflect already injured, nearly dead, or already dead fish (''naturally moribund'') that were impinged by the screen. As a consequence of relaxing the holding times and other requirements, EPA based the performance standard on a larger set of data, with broader geographic representation. (For more information, see DCN 12–6703.) The rationale for these revisions to the data acceptance criteria are described in further detail in the TDD, Chapter 11. Using the revised criteria, EPA reviewed the data in each of the impingement mortality studies for potential inclusion in EPA's evaluation of an impingement mortality performance standard. These changes resulted in an increase in the number of facility data sets acceptable for determining the impingement mortality performance standard, from four data sets at three facilities at proposal to 26 data sets at 17 facilities today. As a result, the 12-month average impingement mortality performance standard of all life stages of fish and shellfish was revised from no more than 12 percent to no more than 24 percent mortality, including latent mortality, for each non-fragile species that is collected or retained in a sieve with maximum opening dimension of 0.56 inches and kept for a holding period of 18 to 96 hours. The revised performance standard and data evaluation criteria are discussed in detail in Section VI and Chapter 11 of the TDD.

EPA also reevaluated its approach to compliance monitoring for the impingement mortality performance standard. In particular, EPA considered the costs and burden of frequent biological monitoring for those technologies that, according to EPA's record, perform equal to or better than

the IM performance standard. As proposed, all facilities would have conducted weekly biological monitoring in perpetuity irrespective of the compliance approach or technologies selected. EPA agrees with comments that this may be unnecessarily burdensome and of limited value for those technologies for which the potential performance is well documented. As such, today's final rule includes seven compliance alternatives, only one of which requires biological compliance monitoring.

EPA notes, however, that a facility relying in part on a credit for reductions in impingement mortality already obtained at the facility (§ 125.94(c)(6)) must gather biological data at a minimum frequency of monthly for a period of two years in order to calculate their 12-month average impingement mortality. Further, a facility choosing to comply using the impingement mortality performance standard (§ 125.94(c)(7)), must conduct biological monitoring at a frequency of at least monthly in order to calculate its 12-month average impingement mortality. The 12-month average is calculated as the sum of total impingement mortality for the previous 12 months divided by the sum of total impingement for the previous 12 months. EPA is requiring that a facility choose to either demonstrate compliance with this requirement for the entire facility, or for each individual cooling water intake structure. The EPA expects that as the performance of the technology is demonstrated by the facility, the Director could reduce the frequency of biological compliance monitoring. Further, prior to a subsequent permit application, a facility could collect sufficient performance data to demonstrate to the satisfaction of the Director that its ''systems of technologies'' compliance alternative is BTA at that facility.

2. Technology Costs

Since publishing the proposal, EPA received a number of public comments from industry stating that EPA had underestimated the costs of modified traveling screens with fish returns. EPA used new information to revise the compliance cost estimates (including the methodology used for technology assignment) and the capital costs for several compliance technologies, including those used as the primary basis for the final rule. Those changes include the following:

- In response to comments challenging EPA's assumption that modified traveling screens were available at most facilities, EPA changed the assignment of the modified traveling cost module [42] so as to apply this only where the existing intake for the model facility intake employed traveling screens. As a result, a number of intakes, such as those that use passive screens (e.g., fixed screens), were assigned higher cost technologies such as larger intakes or wedgewire screens with through-screen design velocities of 0.5 fps.
- Because EPA has clarified that properly operated closed-cycle recirculating systems is one of the compliance alternatives for impingement mortality, those intakes with existing closed-cycle cooling no longer receive additional impingement technology costs.
- At proposal, the design of the larger intake module was based on a through-screen velocity of 1.0 fps and, therefore, was not consistent with the low velocity compliance alternatives. To ensure that this technology will be consistent at all locations, the through-screen design velocity for the larger intake was changed to a maximum of 0.5 fps, resulting in a substantial increase in capital and operational and maintenance costs.
- EPA received a number of comments noting that fish returns might be difficult to install at some intakes. EPA reviewed the fish return cost component of the modified traveling screen module and concluded that EPA's costs represented an ''easy'' installation rather than an average of both easy and more difficult installation costs. To account for a wider range of fish return costs that includes those with higher costs, EPA increased the capital costs of the fish return component and included additional costs for those with particularly difficult circumstances such as very long intake canals and submerged offshore intakes. For a detailed discussion, see Chapter 8 of the TDD.
- EPA received a number of comments stating that it had underestimated capital costs for modified traveling screens. During site visits to several facilities, EPA obtained actual traveling screen replacement costs. EPA compared its estimates to actual reported replacement costs and vendor-supplied data and concluded that the capital costs were underestimated by about 20 percent. Therefore, EPA increased the capital costs of modified traveling screens by 20 percent.

These changes to the engineering costs result in a 24 percent increase in capital and O&M costs. The revised costing assumptions are discussed in further detail in Chapter 8 of the TDD.

3. Monitoring Costs for Impingement Mortality

Many commenters expressed concern that requirements for monitoring for the impingement mortality performance standard were excessive. Of particular concern were the long-term costs for impingement mortality monitoring at facilities that would be relying on either closed-cycle cooling or an intake velocity less than or equal to 0.5 fps through-screen design velocity. The final rule includes seven compliance alternatives for the impingement standard. One of these alternative provides for reduced monitoring requirements for facilities employing modified traveling screens. This alternative is available if the facility has demonstrated the technology is optimized to minimize impingement mortality of all non-fragile species. Under this approach, EPA requires the facility to provide site-specific performance data to identify the operational conditions that will ensure that the technology is being operated optimally. Once these operational conditions have been identified, the Director must include in the permit those operational measures and best management practices identified in the study and deemed as necessary by the Director to ensure proper operation of the modified traveling screens. EPA also clarified in the rule that compliance monitoring and reporting requirements for facilities that comply with the impingement mortality standard by employing one of the pre-approved or streamlined IM compliance alternatives will be largely limited to information that ensures proper operation of the installed control technology. EPA estimates that this alternative approach will reduce annual monitoring and reporting costs from approximately $47 million under the proposed rule to approximately $27 million under the final rule.

4. Benefits and Willingness To Pay Survey

EPA received a number of comments on the proposed rule and NODA addressing the use of stated preference surveys to determine the public's willingness-to-pay for benefits associated with the rule. EPA conducted a stated preference survey to calculate benefits associated with minimizing

[42] EPA used a model facility approach to develop compliance technology costs where different sets of compliance technology cost algorithms called modules were assigned to individual model facility intakes on the basis of site-specific conditions. For a more detailed discussion, see the TDD Chapter 8.

adverse impacts to aquatic ecosystems from cooling water intakes. For some commenters, the use of stated preference surveys to evaluate benefits remains controversial, and they objected to using such surveys. Other commenters acknowledge the decades of technical development and improvement of these methods and support using stated preference surveys. Based on consideration of public comment, EPA decided not to employ the survey results for purposes of decision-making in this rule, or include them in assessing the total benefits of the rule. The rule does not require State Directors to require facility owners or operators to conduct or submit a willingness to pay survey to assess benefits.

B. Regulatory Approach and Compliance

1. Regulatory Approach

EPA has largely adopted the regulatory approach of the proposed rule with several changes regarding compliance, particularly with respect to the impingement mortality requirements. These changes clarify elements of the rule (as discussed in the NODAs) about which commenters expressed uncertainty and provide additional flexibility to regulated facilities in meeting the rule's impingement mortality standard.

EPA received some comments questioning whether specific provisions apply to the entire facility or to individual intakes. To clarify this issue, EPA modified the rule language so as to state clearly that a facility with multiple intakes must decide whether it will adopt a single compliance strategy for impingement mortality for the entire facility or adopt an intake-specific compliance strategy at each cooling water intake. Thus, facilities may select different compliance strategies for different intakes, providing flexibility at facilities with multiple intakes. Regardless of which impingement compliance approach a facility chooses (single strategy for entire facility or different strategies for different intakes), if the facility chooses to comply with the impingement standard by operating at a maximum through-screen velocity of 0.5 feet per second, the facility must measure and comply with the low velocity compliance alternative of 0.5 fps on an individual intake basis.

a. Impingement Mortality Standards

EPA received a substantial number of comments requesting greater flexibility and clarification regarding compliance with the impingement mortality standards, including suggestions that (1) impingement requirements be addressed on a site-specific basis; (2) certain technologies should be pre-approved; (3) credit should be given for existing technologies and operating conditions; and (4) combinations of technologies be allowed. EPA has concluded that low-cost technologies for impingement mortality reduction are effective, widely available, feasible, and demonstrated for facilities nationally and thus, a completely site-specific approach is not appropriate. However, recognizing that for some sites technologies other than modified traveling screens may allow a facility to achieve the same level of performance, EPA has included compliance options that provide for more flexibility and allow consideration of the performance of combinations of technologies and operating conditions. Some of the more significant changes include the following:

- *Compliant technologies*—EPA has concluded that employing certain technologies will meet or exceed the requirement of the impingement mortality standard, provided they meet certain design and operational criteria. These pre-approved and streamlined technologies include a closed-cycle recirculating system, existing offshore velocity cap, and maximum design intake velocity of 0.5 fps. Associated with these compliance options are reduced monitoring requirements.
  - *Closed-Cycle Cooling*—EPA has concluded that a fully closed-cycle recirculating system as defined at § 125.92(c) (and that is properly operated and maintained) achieves the impingement mortality performance standard. Even after retrofitting a facility to be closed-cycle, it may still be possible to withdraw and discharge cooling water at rates associated with once-through cooling. Existing facilities that retrofit to closed-cycle cooling often do so without modifying or replacing their condenser to optimize it for closed-cycle operation. In such cases, the facility has an incentive to operate its system in a once-through cooling mode, to minimize chemical costs or avoid a turbine backpressure constraint. EPA has concluded that it is not appropriate to add conditions to the definition of closed-cycle cooling because water may be withdrawn for purposes of replenishing losses to a closed-cycle recirculating system other than those due to blowdown, drift, and evaporation from the cooling system. However, the final rule provides the Director the discretion to determine whether the operation of a cooling system minimizes the make-up and blowdown flows withdrawn, consistent with the definition of a closed-cycle recirculating system (40 CFR 125.92(c)).
  - *Existing Offshore Velocity Caps*—The record indicates that an existing offshore velocity cap as defined at § 125.92(v) also achieves the necessary reductions in impingement mortality and thus meets the IM standard. Data in the record concerning existing velocity caps show that a velocity cap alone is insufficient, but data on existing offshore velocity caps shows that a velocity cap in combination with their current offshore locations meet EPA's BTA standard for impingement mortality. EPA has determined that new offshore velocity caps could comply using the combination of technologies approach in § 125.94(c)(6). The offshore component likely makes the velocity cap technology unavailable except to facilities in marine waters and certain Great Lakes locations; therefore, the technology alone is not BTA.
  - *Through-Screen Velocity*—EPA has clarified that compliance with a 0.5 fps intake velocity achieves the IM standards. EPA's record shows an intake velocity of 0.5 fps or lower provides similar or greater reductions in impingement, and therefore impingement mortality, than modified traveling screens—the technology forming the basis for the numeric impingement mortality performance standard that is the goal for all facilities. There are two ways to demonstrate compliance using intake velocity. First, an intake with a maximum design intake velocity less than or equal to 0.5 fps is pre-approved BTA for impingement mortality and does not require further monitoring. Alternatively, under a streamlined option, the facility may demonstrate to the Director that the facility meets the velocity requirement through monitoring of the actual intake velocity. Screen velocity can be monitored by direct measurement or by calculation using the volumetric actual intake flow and source water surface elevation.
- *Modified Traveling Screens*—A facility must operate modified traveling screens [43] that the Director determines meets the definition at § 125.92(s). Facilities will demonstrate that they have optimized performance of their traveling screen to minimize IM.

[43] While rotary screens are technically not modified traveling screens, the regulation at § 125.92(s) defines modified traveling screens to include traveling water screens that incorporate measures protective of fish and shellfish. EPA has thus provided the flexibility for other types of active screens that achieve the same or better performance than modified traveling screens.

• *Systems of Technologies to Meet the IM Standard*—EPA received a substantial number of comments asking whether previously installed technologies or various combinations of technologies and operating conditions could also meet the BTA standard for impingement mortality. For example, some technologies, such as louvers, reduce the rate of impingement, but the effect on overall impingement mortality reduction cannot easily be measured and would not appear in biological sampling of the technology. In EPA's view, the Director should take into account the reduction in impingement—for example, that associated with such technologies as louvers or behavioral deterrents, or due to intake location—when determining permit conditions to include in the facility's permit in order for a combination of technologies to achieve the required impingement mortality standards. Thus, the facility should obtain credit toward the impingement mortality standard for such reductions in the rate of impingement. A number of the flexibilities above were described in the June 11, 2012 NODA, and EPA has included a provision to allow additional flexibility in achieving compliance through the use of a combination of technologies and operating conditions. A facility may use a system of technologies, management practices and operational measures to achieve the impingement mortality standard, including, for example, flow reductions, seasonal operation, unit closures, credit for intake location, behavioral deterrent systems, and other technologies and operational measures. The Director must determine, based on a demonstration by the facility to the Director, that the system of technologies or operational measures, in combination, have been optimized to minimize impingement mortality of all non-fragile species. The Director may require additional operational measures, best management practices, and monitoring as part of the demonstration. In addition, the facility's permit must include conditions to ensure that the facility operates its cooling water intake structures in a manner consistent with the conditions and measures identified in its demonstration to the Director.

• *Numeric IM Performance Standard*—As a practical matter, EPA expects that very few facilities will choose to comply with the numeric impingement mortality performance standard. Those facilities that choose to comply in this way will need to demonstrate to the Director how the technology the facility is implementing enables the facility to meet the impingement mortality standard. The numeric standard provides a pathway to compliance for innovative technologies that may be developed in the future.

EPA also received many comments stating that barrier nets were both unnecessary and might be unavailable in many locations. Because EPA's revised impingement data set had sufficient data to characterize shellfish impingement, EPA has eliminated the barrier net requirement in the final rule. See Section VI for more information.

b. Definition of Closed-Cycle Cooling System

In the final rule, EPA revised the definition of a closed-cycle recirculating system to provide additional flexibility for the Director in determining which closed-cycle cooling systems comply with the IM standards. The proposed rule's definition of ''closed-cycle recirculating systems'' included, as elements of a properly operated closed-cycle system performance, requirements generally expressed in terms of cycles of concentration (COC) or percentage flow reduction relative to a once-through cooling system. Cycles of concentration represents the accumulation of dissolved minerals in the recirculated cooling water. Discharge of a portion of the water (called ''blowdown'') is used to control the buildup of these minerals. COC is a measure of how concentrated are chlorides in recirculated water relative to make-up water, and thus how well a system recycles intake water before replacing it with new withdrawals. This is not to be confused with cycles of flow, as some commenters appeared to do.

Cycles of concentration can be measured as the ratio of chloride levels in the recirculated water or blowdown relative to the chloride levels in the source water, or makeup water. Some commenters stated that, while they have been operating as closed-cycle units for many years, they were concerned that their facilities would not be ''closed-cycle recirculating systems'' under the proposed definition because they would not achieve the required COC. EPA has found the concentration cycles in the majority of cooling towers usually range from 3 to 6 at power plants, and can often exceed 9 at manufacturing facilities. However, EPA recognizes that many manufacturers have complex water balances, and calculating a specific flow reduction attributable to cooling water use could be difficult and time consuming. In such cases, many manufacturers could far more readily calculate the cycles of concentration of particular unit operations, and could therefore show those unit operations that use cooling water meet the conditions for closed-cycle cooling. EPA found in site visits many complex manufacturing facilities already have this capability, and have achieved very high COC. Likewise, power plants may find it much easier to measure flow than cycles of concentration. Accordingly, EPA's proposed rule attempted to recognize performance using either metric. EPA expects most power generators would use percentage flow reduction to demonstrate they are closed-cycle, and expects most manufacturing facilities would use COC for those units that utilize water for cooling purposes. Increasing the amount of minerals present in the water by cycling can make water less aggressive to piping; however, EPA is also aware that excessive levels of minerals (such as found in certain source waters, most notably those with higher salinity) can cause scaling problems, leading to different levels of both metrics for freshwater and saltwater facilities.

EPA carefully considered these issues and concluded that the most important aspect of the definition of a properly operated closed-cycle cooling system is that the makeup flow be minimized. Thus EPA has removed the numeric levels of the metrics as a threshold, while retaining the minimized makeup flow aspect of the definition. As an example, in the case of a facility that uses make-up water from a freshwater source, a Director may determine that a closed-cycle recirculating system can generally be deemed to minimize make-up and blowdown flows if it reduces actual intake flows (AIF) by 97.5 percent as compared to a once-through cooling system or if its cooling tower is operated at a minimum cycles of concentration of 3.0. And likewise, in the case of a facility that uses make-up water from a saltwater, brackish, or other source with a salinity of greater than 0.5 parts per thousand, a Director may determine that a closed-cycle recirculating system can generally be deemed to minimize make-up and blowdown flows if it reduces actual intake flows (AIF) by 94.9 percent as compared to a once-through cooling system or if its cooling tower is operated at a minimum cycles of concentration of 1.5. These reductions and cycles of concentration are illustrative. A Director may determine that other levels near these numbers could also constitute a closed-cycle recirculating system. The final rule further recognizes that in certain unavoidable circumstances, these levels for COC or percent flow reduction might not be achievable at all facilities. Such circumstances could

include situations where water quality-based discharge limits might limit the concentration of a pollutant that is not readily treatable in the cooling tower blowdown or situations where varying source water quality could lead to unavoidable problems concerning scale formation, solids buildup, corrosion, or media fouling. Such facilities should demonstrate these circumstances to their Director and indicate the measures they have taken to minimize makeup flows. The Director will retain the discretion to conclude that the particular facility employs a closed-cycle recirculating system when the benchmarks are not met.

In cases where the Director will make a determination as to whether the facility's cooling system meets the definition of a closed-cycle recirculating system, EPA's intent is that the withdrawal of small amounts of service water (for uses such as fire suppression, potable water, screenwash water, vehicle wash water, and such) do not preclude consideration of the system as closed-cycle. To avoid misuse of this provision, the Director will make the final determination.

Finally, EPA data show more than 50 facilities have cooling systems that include impoundments. In some cases, the cooling systems that include impoundments were created in the waters of the U.S., in whole or in part, or were created in uplands but withdraw make-up water from waters of the U.S. These cooling systems may perform like a closed-cycle recirculating system. EPA has clarified at 40 CFR 125.92(c)(2) that a cooling system that includes an impoundment lawfully created in the waters of the U.S for the purpose of cooling may be considered a closed-cycle recirculating system. As with other closed-cycle recirculating systems, the Director will determine whether the impoundment minimizes the withdrawal of water for cooling purposes and therefore meets the definition of a closed-cycle recirculating system. See Section VI for further discussion.

c. Entrapment

The proposed rule included a prohibition on trapping organisms in an intake structure with no viable escape route. Many commenters expressed concern that the entrapment requirements were not well defined and would require costly technologies not considered in EPA's cost estimates. Moreover, in the commenters' view, the requirements could be difficult to comply with, particularly where cooling systems employ impoundments or basins downstream of the initial intake structure. EPA agrees that in some cases, such as where a canal or basin for maintaining consistent water levels is located behind the CWIS, that the proposed entrapment requirement could require additional controls such as additional fish returns that are not, in all cases, feasible. For example, EPA found in site visits that the forebay may be located more than a mile from the CWIS, and a fish return in that situation would not have been feasible. The final rule deleted the requirement that prohibited entrapment. In the final rule, facilities would account for all impinged fish and shellfish when conducting their two year performance study. To the extent entrapment of shellfish poses a concern, the Director may establish additional measures, such as seasonal deployment of barrier nets, under § 125.94(c)(8).

d. Requirements for Threatened and Endangered Species

EPA consulted with the Fish and Wildlife Service and National Marine Fisheries Service and EPA made a number of adjustments to the rule to protect threatened and endangered species and designated critical habitat as a result of the consultation; the protections were included to insure that the rule is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. To be clear, the ESA provisions of the rule extend to all listed T&E species, not just fish and shellfish. See Section VIII.K for a summary of these provisions.

2. Compliance Timelines for Impingement Mortality and Entrainment Requirements

At proposal, compliance deadlines for impingement mortality and entrainment requirements were set separately. Facilities would have been required to meet impingement mortality reduction requirements as soon as possible, but no more than eight years after the effective date of the rule. Compliance with entrainment reduction requirements would have been set by the Director. Many commenters expressed concern that the compliance timeline for the impingement mortality and entrainment requirements should be harmonized to prevent a facility from having to install a technology to comply with impingement mortality requirements, only to be required at a later date to install an entrainment reduction technology that effectively renders the investment in the impingement mortality technology obsolete or worthless.

EPA agrees that facilities required to install both impingement and entrainment compliance technologies will benefit from reduced compliance costs if the compliance scheduling is coordinated. EPA also agrees that requiring more timely decisions on entrainment requirements than anticipated at proposal will facilitate these cost savings without sacrificing fish protection. In some cases, impingement compliance can be attained with entrainment technologies. For example, the Director may determine that the installation of modified fine-mesh traveling screens and narrow-slot wedgewire screens will achieve the impingement mortality standard and further, that this same equipment represents, on a site-specific basis, BTA entrainment control. If the compliance schedule is not harmonized, it is possible that a facility could install (at significant cost) coarse-mesh traveling screens that it might have to later retrofit with fine-mesh panels. It is also possible that a facility could make modifications necessary to attain a 0.5-fps through-screen velocity to meet the IM standards and later have closed-cycle cooling identified as BTA for entrainment, thereby making the intake modifications for impingement control unnecessary.

To address this issue in the final rule, EPA revised the compliance requirements so that the Director is required first to establish entrainment requirements under § 125.94(b)(1) in the final permit. The facility will then be required to comply with the impingement mortality standard in § 125.94(c) as soon as practicable thereafter. See Section VIII on implementation for more detailed discussion.

Because an entrainment requirement could require controls that take many years to design, finance and construct, the Director may establish interim milestones related to meeting the final requirements to ensure that the facility is making progress.

C. New Units

EPA has revised the definition of new units to mean a stand-alone unit at an existing facility the construction of which is commenced after the effective date of today's final rule; consists of only a stand-alone unit constructed at an existing facility; and that does not otherwise meet the definition of a new facility at § 125.83. A stand-alone unit is a new, separate unit that is constructed at an existing facility. New unit includes stand-alone units that are added to a facility for purposes of the same general industrial operation as the existing

facility. A new unit may have its own dedicated cooling water intake structure, or may use an existing or modified cooling water intake structure.

VI. Basis for the Final Regulation

In response to the Supreme Court's decision in *Entergy Corp.* v. *Riverkeeper, Inc. et al.* in April 2009, EPA has reevaluated the requirements for existing facilities under CWA section 316(b). As discussed above, EPA collected additional data and information to update its assessment of the efficacy of various technological measures for reducing IM&E and analyses prepared for the earlier rule-making efforts. EPA's additional technical rigor provided a strengthened analysis of different technologies for reducing IM and their effectiveness. As a result of its revised assessments and further consideration of the factors affecting the availability of different technology in a wide range of settings, EPA has decided not to re-promulgate requirements for existing facilities that mirror those of the final Phase II rule. Further, EPA is adopting, for the reasons explained in detail below, a new framework. In addition, as previously noted, EPA decided to address all existing facilities subject to section 316(b) in this rule (i.e., both those subject to the Phase II rule and some of those subject to the Phase III rule). For a brief description of the final rule, see Section IV.

A. EPA's Approach to BTA

CWA section 316(b) requires EPA to establish standards for cooling water intake structures that reflect the ''best technology available for minimizing adverse environmental impact.'' As explained above, the statute is silent with respect to the factors that EPA should consider in determining BTA, but courts have held that section 316(b)'s reference to CWA sections 301 and 306 is an invitation for EPA to look to the factors [44] considered in those sections in establishing standards for section 316(b).

But EPA, when considering such factors, is not bound to evaluate these in precisely the same way it considers them in establishing effluent limitations guidelines under CWA section 304. As the Supreme Court noted, given the absence of any factors specified in section 316(b), EPA has much more discretion in its standard setting under section 316(b) than under the effluent guidelines provisions. Therefore, the statute vests EPA with broad discretion in determining what is the ''best'' technology that is ''available'' for minimizing adverse environmental impact. As the Supreme Court has further explained, under section 316(b), the ''best'' technology ''available'' may reflect a consideration of a number of factors and ''best'' does not necessarily mean the technology that achieves the greatest reduction in environmental harm that the regulated universe can afford. Rather, the ''best'' (or ''most advantageous,'' in the court's words) technology may represent a technology that most efficiently produces the reductions in harm.

EPA interprets section 316(b) to require the Agency to establish a standard that will best minimize impingement and entrainment—the main adverse effects of cooling water intake structures not otherwise addressed by the other sections of the CWA (e.g., thermal discharges). In EPA's view, several important considerations underpin its decision. First, its BTA determination should be consistent with, and reflective of, the goals of CWA section 101: ''to restore and maintain the physical, chemical, and biological integrity of the Nation's waters,'' with the interim goal of ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.''

Second, E.O. 13563 directs EPA and other Federal agencies to identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. In its regulatory actions, agencies ''must take into account benefits and cost, both quantitative and qualitative,'' and to the extent permitted by law, only promulgate regulations that are based on ''a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)'' (see section 1(b)(1)). In selecting a regulatory approach, agencies must tailor regulations to impose the least burden on society and, in choosing among regulatory alternatives, select ''those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)'' to the extent permitted by law. 76 FR 3821 (January 21, 2011). Because the Supreme Court has concluded that the CWA authorizes EPA to consider costs and benefits in its BTA determination, EPA has consequently considered costs and benefits in this final rule as directed by the President. In accord with E.O. 13563, EPA has concluded that the benefits of the final rule justify its costs. For additional discussion, see Section VI below.

Consideration of benefits is complicated by the debate about the tools and data that would permit a complete expression of ecological benefits in monetized terms. EPA has, however, used the best available science regarding widely accepted tools and data to monetize the benefits of the various options in four major categories: recreational fishing, commercial fishing, nonuse benefits, and benefits to threatened and endangered species (see Section X below). EPA has concluded that the benefits estimated for the first two categories are generally complete, while the benefits estimated for the latter two categories are far from being complete for a number of reasons. For example, the nonuse benefits transfer was based on a species that represents less than one percent of adverse environmental impacts. EPA is continuing to refine its tools to develop a more complete analysis concerning benefits for future application.

In selecting the ''best'' technology available for minimizing adverse environmental impact, EPA looked at a number of factors. As discussed previously, EPA's initial approach to 316(b) standard setting was similar to one it follows in considering a technology-based rule under sections 301, 304, and 306. EPA first considered the availability and feasibility of various technologies, and then evaluated costs associated with these technologies (including potential costs to facilities and households), and their economic impacts. EPA also reviewed the effectiveness of these technologies in reducing impingement mortality and entrainment. Further, EPA also considered additional factors set out in CWA section 304(b), including location, age, size, and type of facility. In addition, EPA considered the non-water quality environmental impacts of different technologies on energy production and availability, electricity reliability, and potential adverse environmental effects that could arise from the use of the different technologies evaluated.

As a result of this thorough evaluation, in the case of the BTA standard for impingement mortality, EPA based the standard on performance of well-operated modified traveling screens with a fish handling and return system as defined more specifically by the rule. Under the BTA IM standard, a facility has a number of options for

[44] The factors specifically delineated in CWA sections 301 and 306 include cost of the technology, taking into account the age of the equipment and facilities, process employed, engineering aspects associated with a particular technology, process changes and non-water quality environmental impact (including energy requirements).

compliance. In the case of the BTA standard for entrainment, on the other hand, EPA could not identify one technology that represented BTA for existing facilities on a national basis.

B. Overview of Final Rule Requirements

As noted, EPA concluded that the best technology available for minimizing impingement mortality was ''modified traveling screens,'' as more specifically defined in the rule. The BTA Impingement Mortality Standard includes seven technology options for complying with the standard whose performance is equivalent to, or better performing than modified traveling screens. First, the rule identifies four technologies (closed-cycle recirculating systems, reduced design intake velocity, reduced actual intake velocity, and existing offshore velocity caps) that reduce impingement mortality as well or better than modified traveling screens, and therefore will generally comply with the BTA Impingement Mortality Standard of today's final rule.

The rule also provides that, if the Director determines that modified traveling screens are insufficient to protect shellfish, the Director may establish additional measures under § 125.94(c)(8) such as seasonal deployment of barrier nets, or if modified traveling screens [45] are insufficient to protect other species, the Director may establish additional protective measures under § 125.94(c)(9). In addition, the rule provides in § 125.94(g) that the Director may establish additional control measures and monitoring or reporting requirements in the permit in order to protect Federally-listed threatened and endangered species and designated critical habitat. The Director may include such conditions that are designed to minimize incidental take, reduce or remove more than minor detrimental effects to Federally-listed species and designated critical habitat or avoid jeopardizing Federally-listed species and or destroying or adversely modifying designated critical habitat (e.g., prey base).

Next, the final rule provides an option that allows a facility to demonstrate to its permitting authority that it has installed modified traveling screens—the technology EPA identified as the basis for the BTA impingement mortality standard—and to provide data on the performance of its screens. The facility must demonstrate that its modified traveling screens are consistent with EPA's definition and demonstrate through an impingement technology performance optimization study that its screens have been optimized to minimize impingement mortality. After consideration of the information provided, the permitting authority will determine whether the technology is the best technology available for impingement mortality reduction at the site and include permit conditions to ensure optimal performance of the screens. In other words, the owner or operator of a facility will comply with the BTA standard for IM at § 125.94(c)(5) if that facility uses modified traveling screens as defined at § 125.92(s), and operates in accordance with the permit conditions established by the Director that ensure the technology will perform as demonstrated. As noted above, in certain circumstances, under §§ 125.94(c)(8), (9) and 125.94(g), the Director may require additional protective measures.

As stated in the June 11, 2012 NODA, EPA does not intend for facilities to install closed-cycle cooling solely for the purpose of meeting the IM requirements. In fact, EPA expects all facilities could comply with IM requirements without relying on retrofitting to closed-cycle cooling (see Exhibit VIII–1, showing expected compliance alternative based on technologies in place today). If a facility chooses to comply with the BTA IM standard by installing and operating traveling screens, the screens must meet the definition of modified traveling screens provided at § 125.92(s). These may include, for example, modified Ristroph screens with a fish handling and return system, dual flow screens with smooth mesh, and rotary screens with fish returns such as vacuum pumps. EPA based the regulatory definition on the commonly found features of modified traveling screens used in developing the BTA impingement mortality standard.

In addition, the final rule also provides a compliance option that would allow facilities the option of demonstrating to the Director on a site-specific basis, similar to the showing for modified traveling screens, that a system or combination of technical and operational measures will achieve the BTA standard for impingement mortality at a particular site. Using a combination of technical and operational measures as the basis for demonstrating compliance allows facilities the opportunity to take credit for intake location, flow reduction, or other measures already employed to reduce the rate of impingement. Further, the combination of technical and operational measures provides the flexibility to use a system of approaches to reducing impingement and impingement mortality. This may include technologies that were not found to reduce impingement consistently or in all circumstances, but that on a site-specific basis have been demonstrated to provide a high level of performance. For example, a facility might employ light and sound to induce an avoidance response from certain species. This might not alone address impingement mortality for all non-fragile species at the intake, therefore additional measures (intake location, barrier nets, etc.) would also be applied, to minimize the rate of impingement or impingement mortality.

For both the screens and system of technologies, a two year study must be completed in which biological data collection is used to make site-specific adjustments to screens or the combination of technologies in order to optimize performance at that facility. Those optimal operating parameters then become permit conditions. For facilities that have already installed traveling screens or the technologies associated with the system approach, EPA has combined the two year biological study with the other permit application and rule requirements for biological data collection, including the Source Water Baseline Biological Characterization Data. In this manner, EPA is establishing a consistent set of biological study requirements, with an overall reduction in the burden of the required level of biological monitoring.

Lastly, a facility may choose to comply with the numerical impingement mortality performance standard that was established based on the BTA technology. If a facility chooses this compliance option, it must conduct periodic monitoring to demonstrate compliance. Under this last compliance option, a facility could implement innovative technologies to address impingement mortality and subsequently demonstrate that their performance is as good as, or better than, a modified traveling screen with fish handling and return system. EPA envisions that after a sufficient demonstration period of a technology's performance, the facility will be able to qualify its operation under the previous option.

For entrainment, on the other hand, EPA could not identify one technology that represented BTA for existing facilities on a national basis, for the reasons explained in detail below. Instead, the national BTA entrainment standards for existing facilities establishes a detailed regulatory framework for the determination of BTA

[45] Or any of the IM compliance alternatives.

entrainment requirements by the permitting authority on a site-specific basis.

While site-specific permit requirements are not new, what is different about this approach from the current requirement for permits to include 316(b) conditions is that for the first time, EPA is establishing a detailed specific framework for determining BTA entrainment control requirements. Thus, the rule identifies what information must be submitted in the permit application, prescribes procedures that the Director must follow in decision making and factors that must be considered in determining what entrainment controls and associated requirements are BTA on a site-specific basis.

As previously noted, EPA looked at a number of factors in considering what national entrainment standard it should adopt. As discussed in detail in the following section, EPA identified only one high performing technology as a potential BTA candidate for entrainment: closed-cycle recirculating systems as defined at § 125.92(c)(1). While there are other technologies for entrainment that are available or demonstrated, they are not uniformly high performing technologies. See TDD Chapter 6 for more information regarding the lack of intermediate performing technologies for entrainment. EPA has identified the following specific factors as the key elements in its decision not to prescribe this technology as the basis for a national BTA standard for entrainment: land availability, air emissions, and remaining useful plant life. How these factors dictated EPA's decision is discussed below.

For new units at existing facilities, EPA has established BTA requirements to minimize impingement mortality and entrainment, based on flow reduction commensurate with closed-cycle cooling. The rest of this section describes in detail the above considerations.

C. Technologies Considered To Minimize Impingement and Entrainment

As described in Chapter 4 of the TDD, power plants and manufacturers withdraw large volumes of cooling water daily. Cooling water withdrawals are responsible for over half of surface water withdrawals for all uses in the United States, including agriculture and municipal uses. The purpose of cooling water withdrawals is to dissipate that portion of the heat that is a by-product of industrial processes that facilities have not harnessed to a productive end and therefore view as waste heat.

The majority of environmental impacts associated with intake structures are caused by water withdrawals that ultimately result in the loss of aquatic organisms. These losses might be from impingement, entrainment, or both. Impingement occurs when organisms are trapped against the outer part of a screening device of an intake structure.[46] The force of the intake water traps the organisms against the screen and they are unable to escape. Not all organisms in the incoming water are impinged, however. Some might pass through the screening device and travel through the entire cooling system, including the pumps, condenser or heat exchanger tubes, and discharge pipes. This is referred to as entrainment. Various factors lead to the susceptibility of an organism to impingement or entrainment. For more detailed discussion of impingement and entrainment and the associated mortality and other effects, see Section III above.

For purposes of this rule, EPA is adopting the following conventions for defining impingement and entrainment and mortality:

- Impingement: Occurs when any life stage of fish and shellfish are pinned against the outer part of an intake structure or against a screening device during intake water withdrawal. Impingement may also occur when an organism is near a screen but unable to swim away from the intake structure because of the water velocity at the intake.
- Entrainment: Occurs when any life stages of fish and shellfish are drawn into the intake water flow entering and passing through a cooling water intake structure and into a cooling system.
- Impingement Mortality: The death of fish or shellfish due to impingement. It may also include organisms removed from their natural ecosystem and lacking the ability to escape the cooling water intake system and thus subject to mortality. Note that impingement mortality need not occur immediately. Impingement may cause harm to the organism which results in mortality at some time after impingement. For purposes of this rule, EPA has defined impingement mortality as the death of those organisms collected or retained by a sieve with a maximum opening of 0.56 inches; this includes both the ⅜-inch sieve and a ½-inch by ¼-inch mesh.[47]
- Entrainment Mortality: The death of fish or shellfish due to entrainment. This is typically associated with mortality related to small organisms that pass the entire way through a facility and are killed as a result of thermal, physical, or chemical stresses. This term also includes the death of those fish and shellfish that may occur on fine mesh screens or other technologies used to exclude the organisms from entrainment. For purposes of this rule, EPA defined entrainment mortality as the death of those organisms passing through a sieve with a maximum opening of 0.56 inches.

Impingement mortality is typically less than 100 percent of the impinged organisms if a fish return or backwash system is employed. Impingeable organisms are generally not very small fish or early life stages (e.g., those that can pass through ⅜-inch mesh screens), but typically are fish with fully formed scales and skeletal structures and well-developed survival traits such as behavioral responses to avoid danger. EPA's data demonstrate that, under the proper conditions, many impinged organisms can survive.

Entrainable organisms generally consist of eggs and early life stage larvae. Early larvae generally do not have skeletal structures, have not yet developed scales, and in many cases are incapable of swimming for several days after hatching. EPA has found that entrainable organisms that are collected after interaction with the CWIS show poor survival in the case of most eggs, and essentially no survival of larvae. Consequently, on the basis of the record information it has reviewed, EPA concluded for purposes of this rule that all entrained organisms die, i.e., no entrained organisms survive. (See, for example, 76 FR 22188 [April 20, 2011] and 69 FR 41620 [July 9, 2004].) Therefore, without entrainment control, entrainment is assumed to lead to entrainment mortality. Also see Chapter A7 of the Phase II Regional Studies Document (DCN 6–0003; EPA–HQ–OW–2002–0049–1490).

Whether an organism near a cooling water intake structure is impinged or entrained is a function of the screen mesh size. Holding the number and size distribution of organisms at the intake constant, a larger screen mesh size will result in relatively more entrainment, while a smaller mesh size will result in

[46] Typically, cooling water intake structures use various screening devices to prevent objects (e.g., debris, trash) from being drawn in with the cooling water and ultimately clogging or damaging the cooling water system, especially the condenser or heat exchanger components.

[47] Mesh sizes of ⅜″ are commonly referred to as coarse mesh; this refers to the size of the screen opening (in contrast to fine mesh) and not the roughness of the mesh material.

relatively more impingement. Historically, traveling screens deployed by power plants used a ⅜-inch mesh size. For this reason, most studies and reports referring to impingement are in fact referring to those organisms impinged on a ⅜-inch mesh screen. Similarly, entrainable organisms are those organisms fitting through a mesh of less than or equal to ⅜ of an inch. This also means the majority of entrainable organisms are composed of eggs, larvae, and smaller juveniles. More recent studies, particularly those that evaluate mesh sizes smaller than ⅜ of an inch, continue to refer to impingement as any organism caught on the screen. This can cause some confusion because many organisms that would have been entrained with a ⅜-inch mesh instead become impinged by the finer mesh. These are referred to as impinged entrainables or ''converts.'' EPA has also found that most studies of entrainment are biased toward the larger (older) larvae with higher survival rates and do not analyze survival of smaller larvae. This bias implies a focus on larvae body lengths sufficient to have begun scale and bone development, and it generally reflects the more motile early life stages. EPA found that these study findings cannot be applied to smaller and less motile life stages, which are incapable of avoidance responses. It is also important to note that preventing entrainment by some exclusion technologies might result in very high entrainment reductions by converting entrainment to impingement, but these impinged organisms may have an even lower likelihood of surviving impingement than larger potentially impinged organisms. Therefore, while entrainment refers specifically to passage through the cooling water intake system, entrainment mortality also includes those smaller organisms killed by exclusion from the cooling water intake system. Today's rule uses the ⅜-inch mesh size as part of the definition of impingement mortality and entrainment mortality as a means of clearly differentiating those organisms that might be susceptible to impingement or entrainment, and thereby avoids any confusion over the status of impinged entrainables or ''converts.''

Generally, two basic approaches can be used to reduce impingement mortality and entrainment. The first approach is flow reduction, where the facility installs a technology or operates in a manner to reduce or eliminate the quantity of water being withdrawn. Reduced volumes of cooling water produce a corresponding reduction in impingement and entrainment and, therefore, reduced impingement mortality and entrainment mortality. It should be noted that, at electric generators, flow reduction could be achieved, perhaps most effectively, by installing more energy efficient production, thereby requiring less cooling per unit of electricity generated. The second way to reduce impingement and entrainment is to install technologies or operate in a manner that either (1) gently excludes organisms or (2) collects and returns organisms without harm. Exclusion technologies or practices divert those organisms that would have been subject to impingement and entrainment away from the intake. Collection and return technologies are installed to collect and return organisms to the source water, allowing impingement to occur but possibly preventing impingement mortality.

Although not available to all facilities, two other approaches to reducing impingement and entrainment are (1) relocating the facility's intake to a less biologically rich area in a waterbody, and (2) reducing the intake velocity. Relocating an intake farther from shore or at greater depths can be effective at entrainment reduction but is not available to many inland facilities because the distance or depths required to reach less biologically-productive waters are not generally available. Further, while a far offshore intake may exhibit a lower density of organisms, the species found will change as a function of distance from the shoreline as well as depth in the water column. Therefore, it may not always be desirable to relocate an intake structure. A reduced intake velocity provides motile organisms the opportunity to swim away from the intake structure. This approach can be very effective in reducing impingement but has no effect on entrainment.

Sections 1 and 2 below further describes flow-reduction and exclusion technologies.

1. Flow Reduction

Flow reduction is commonly used to reduce impingement and entrainment. For purposes of this rulemaking, EPA assumes that entrainment and impingement (and associated mortality) at a site are proportional to source water intake volume. Thus, if a facility reduces its intake flow, it similarly reduces the amount of organisms subject to impingement and entrainment.[48] Some common flow reduction technologies are variable frequency drives and variable speed pumps, seasonal operation or seasonal flow reductions, unit retirements, use of alternate cooling water sources, water reuse, and closed-cycle cooling systems. For additional detailed information on these technologies as well as others, see Chapter 6 of the TDD, ''California's Coastal Power Plants: Alternative Cooling System Analysis'' (DCN 10–6964), and EPRI's ''Fish Protection at Cooling Water Intake Structures: A Technical Reference Manual'' (DCN 10–6813).

a. Variable Frequency Drives and Variable Speed Pumps

A facility with variable speed drives or pumps operating at their design maximum can withdraw the same volume of water as a conventional circulating water pump. However, unlike a conventional circulating water pump, variable speed drives and pumps allow a facility to reduce the volume of water being withdrawn for certain periods. The pump speed can be adjusted to reduce water withdrawals when cooling water needs are reduced, such as when ambient water temperatures are colder (and therefore capable of dissipating more heat), when fewer generating units are operating or when fuel is more efficiently burned. In site visits, EPA found that variable drives and pumps were typically used at units operating below capacity, such as load-following units. EPA estimates that facilities with intermittent water withdrawals could achieve a 5 to 10 percent reduction in flow.[49] For this reason, many baseload generating units and continuously operated manufacturing processes will obtain limited reductions in flow from using these technologies. EPA is further aware that some facilities may need to

[48] Impingement rates are related to intake flow, intake velocity, and the swimming ability of the fish subject to impingement. Entrainment is generally considered to be proportional to flow and therefore a reduction in flow results in a proportional reduction in entrainment, as EPA assumes for purposes of national rulemaking that entrainable organisms are uniformly distributed throughout the source water. EPA has consistently applied this assumption throughout the 316(b) rulemaking process (for a discussion of proportional flow requirements in the Phase I and II rules see, e.g., 66 FR 65276 and 69 FR 41599; also see EPA's 1977 draft guidance manual for 316(b), available at DCN 1–5045–PR from the Phase I docket) and continues to assume that it is broadly applicable on a national scale and is an appropriate assumption for a national rulemaking. EPA recognizes that this assumption does not necessarily apply when relocating or varying the time pattern of withdrawals, such that these may be effective strategies to reduce impingement and entrainment in some locations.

[49] Withdrawals of colder water could allow facilities to reduce their intake flow using variable drives and pumps, but EPA does not have data on the efficacy or availability of this approach.

withdraw water for cooling even while the facility is not in production, such as facilities on standby status, or nuclear facilities where the heat energy generated by fission must still be dissipated while the facility is out of service. As a result, EPA determined that variable frequency drives and variable speed pumps, while useful in specific setting and circumstances, are not BTA candidates because the flow reduction technologies have limited application and availability, and are not a high performing technology as an entrainment control measure.

b. Seasonal Operation or Seasonal Flow Reductions

Seasonal operation or seasonal flow reduction refers to the reduction or elimination of a quantity of water withdrawn either during periods of low demand for electricity output, or to coincide with certain biologically important periods. Most facilities that currently employ seasonal flow reductions do so to limit thermal impacts or to reduce entrainment, because entrainment often has a peak season, particularly during a local spawning season. Freshwater drum, for example, perform broadcast spawning during early summer when water temperatures reach about 65 degrees Fahrenheit.

During specific peak entrainment periods, a facility could scale back its operation (or perhaps not operate at all), thereby reducing or eliminating the volume of cooling water withdrawn. This could be accomplished through a combination of variable speed pumps or shutting down some portion of the pumping system. Seasonal flow reduction could also consist of operating a closed-cycle recirculating system as defined at § 125.92(c)(1) as once-through during part of the year and as a closed-cycle system during the peak entrainment season. (EPA notes that closed-cycle cooling has been rejected as noted in the previous section, and discussed in more detail below.) Facilities could also choose to schedule regular maintenance to occur during these high entrainment periods. These maintenance activities often require the facility to reduce or cease operations and can be timed to coincide with the most biologically productive periods. Through site visits, EPA gathered information on species present at facilities and has identified some sites where entrainment appears to be significant all year long, and other sites where peak entrainment occurs in as few as three to four months of the year.[50] However, if all power-generating facilities in a local area were to stop operating at the same time, there could be difficulty in supplying electricity to the area. Therefore, EPA concluded that seasonal operations have limited nationwide application for controlling entrainment and are thus not widely available entrainment reduction technology.

Impingement is generally more sporadic, less predictable, and more difficult to address with seasonal operation. For example, clupeid species, such as gizzard shad, experience impingement episodes sporadically throughout the winter and spring during periods of especially cold water temperatures, or sporadically throughout the summer and fall during periods of low dissolved oxygen.

c. Unit Retirements

Some power plants units have been retired and others have essentially ceased all operations but have not been formally retired or decommissioned. The reasons for their inactivity vary,[51] but the end result is the facility no longer needs cooling water withdrawals for these units. Similarly, manufacturers may retire processing units as market demand changes, process lines are moved to other sites, or production technologies change. Unit closures provide clear reductions in flow, but the demand for electricity (or other products) might dictate that production be increased at the facility in question or at another facility altogether; there is usually no guarantee that the intake flow will be permanently retired. EPA expects flow reductions due to unit closures could be reasonably included as part of a facility's impingement mortality and entrainment reductions strategy. Given the number of variables involved in the decision to retire a unit and the likelihood of a facility having a unit that is ready to retire at promulgation of the final rule, unit retirements are not a nationally available entrainment reduction measure. See Section VIII for further discussion of how a facility can take credit for flow reductions attributable to unit closures.

d. Use of Alternate Cooling Water Sources

While not reducing the overall usage of water at a facility, using an alternate source of cooling water can reduce impingement and entrainment if the alternate source substitutes for withdrawals from surface waters. An example is using ''gray'' water as a source of cooling water, such as a facility that reaches an agreement with a nearby wastewater treatment plant to accept the wastewater treatment plant's effluent as a source of cooling water.[52] Such alternate sources are limited by available capacity and consistency of flow. Increasing competition for these sources of water may make this a more challenging approach for existing facilities than for new facilities that are not yet fixed in location. In principle, alternate sources could be used to fulfill either a fraction or all of a facility's cooling water demands. In practice, the location of alternate sources, the costs of moving water from the alternate source to the facility, and whether the facility uses a once-through or closed-cycle recirculating system as defined at § 125.92(c) will determine whether the alternate source can meet all or a portion of the facility's cooling water needs. All these factors limit the widespread availability of alternate cooling water sources as an entrainment reduction measure, however use of alternative sources of cooling water such as wastewater treatment effluent could be attractive for certain facilities where the cost of retrofitting or other site-specific circumstances are favorable.[53]

e. Water Reuse

Typically associated with manufacturing facilities, water reuse (defined as using water for multiple processes) can reduce the volume of water needed for cooling, process, or other uses. For example, a facility might withdraw water for non-contact cooling water and then reuse the heated effluent as part of an industrial process. In effect, the facility has eliminated the need to withdraw additional water for the latter

[50] See DCN 10–6702 and its attachments for examples of spawning ''seasons.''

[51] Note that some generating units are retired by the owner (*i.e.,* the unit is no longer considered sufficiently profitable to operate) or is rarely dispatched by its independent system operator for market-driven reasons (*i.e.,* the unit cannot deliver at a competitive price except during limited peak seasons; see also § 125.94(c)(12)). They may also be mothballed, placed on cold storage, or maintained in various other states of operational readiness.

[52] See, for example, EPA's site visit report for PSEG's Linden Generating Station (DCN 10–6557), which has a capacity of 1230 MW, 35 percent CUR, and uses 7–8 mgd of gray water as the sole source of makeup water for its cooling towers.

[53] For maps showing which electric generators are near a source of available reuse water for cooling, see Tidwell, V., J. Macknick, K. Zemlick, J. Sanchez, and T. Woldeyesus. 2013. ''Transitioning to Zero Freshwater Withdrawal for Thermoelectric Generation in the United States.'' (submitted). See also the accompanying presentation given at the American Geophysical Union Fall 2012 Meeting available at *http://www.nrel.gov/docs/fy13osti/57444.pdf.*

process. EPA has observed significant water reuse at manufacturing facilities but has not developed national level data for such reuse because of the range of different manufacturing sectors and the significant variability in manufacturing processes appropriate for reuse. For example, during site visits, EPA observed that it may be difficult to quantify specific water reuse at complex facilities. (See, for example, the site visit report for ArcelorMittal, a steel mill at DCN 10–6551.) For additional detail on water usage in specific industrial sectors, see Chapters 4 and 8 of the TDD.

Increasingly, electric utilities are adopting water reuse to meet a portion or all of their cooling water demands. Water reuse can enhance the reliability of power generation in water-limited environments. Given the complex use (and reuse) patterns for some facilities and the lack of reuse at other facilities, water reuse cannot be considered as a widely available entrainment reduction option.

f. Closed-Cycle Cooling Systems

Closed-cycle cooling systems allow a facility to transfer its waste heat to the environment using significantly smaller quantities of water relative to once-through cooling, and in some cases no water. The main types of closed-cycle cooling systems are wet cooling, dry cooling, hybrid cooling, and impoundments. Each is described below.

i. Wet Cooling Systems

In a wet cooling system, cooling water that has absorbed waste heat transfers that heat through evaporation of some of the heated water into the surrounding air and recirculates the now cooled water to continue the cooling process.[54] This process enables a facility to reuse the remaining water, thereby reducing the quantity of water that must be withdrawn from a waterbody. Because the heat is transferred through evaporation, the amount of water withdrawn from the water source is greatly reduced, though not eliminated completely, because make-up water is required to replace that lost through evaporation and blowdown.[55] The two main types of wet cooling systems are natural draft and mechanical. While wet cooling systems reduce withdrawals significantly relative to once-through systems, they can increase the consumptive use of water because they rely on evaporation (which is not returned to the waterbody) for heat dissipation. When once-through cooling is used and withdrawals are a significant portion of the source waterbody, the return of heated water might contribute to greater evaporation from the waterbody relative to the waterbody's normal evaporation rate. EPA does not have conclusive data on the relative magnitude of these effects, but the data do suggest that the relative difference in evaporation is not so great that it will play a major role in determining a cooling system type in most watersheds. EPA examined available information on evaporation losses in DCN 12–6673, including a comparison to evaporative losses from the downstream effluent plume of once-through cooling systems. While EPA recognizes that evaporative losses from closed-cycle systems are greater, EPA's analysis does not suggest that the difference is substantial enough to outweigh the significant reduction in adverse environmental impacts to aquatic organisms. However, the relative loss of water through evaporation for closed-cycle and once-through systems is site-specific, depending on the exact design of the systems.

There are two common designs for wet cooling systems. A natural draft cooling tower can be as tall as 500 feet and has a hyperbolic shape. The height of these towers creates a temperature differential between the top and bottom of the tower, which creates a natural chimney effect that transfers heat as heated water contacts rising air. In contrast, mechanical cooling towers rely on motorized fans to draw air through the tower and into contact with the heated water.[56] These towers are much shorter than natural draft cooling towers (typically 30 to 75 feet tall) and can be built in groups. Mechanical cooling towers may require more land area than natural draft cooling towers for an equivalent amount of cooling. Both types of towers require electricity for pumps, but mechanical draft towers also require electricity to operate the fans. In both cases, the electricity need of the towers reduces an electric generating facility's net generating output. Thus, the monetary and environmental costs of this reduction in energy efficiency must be considered. These environmental costs include human health and welfare effects from increased air emissions (from burning additional fuel to make up for the power that cannot be sold) and the global climate change effects of increased greenhouse gas output at fossil-fueled facilities (these costs are now explicitly considered in the benefit-cost analysis; see Section X below). Both natural draft and mechanical cooling towers can operate in freshwater or saltwater environments. Saltwater applications typically require more make-up water than freshwater applications, making them less efficient in reducing water withdrawals. Optimized cooling towers can achieve flow reductions of 97.5 and 94.9 percent or better for freshwater and saltwater sources, respectively.

ii. Dry Cooling Systems

Dry cooling systems virtually eliminate the need for cooling water withdrawals.[57] Unlike wet cooling systems, waste heat in dry cooling systems is transferred completely through convection and radiation, rather than evaporation. Direct dry cooling is much like a car radiator; turbine exhaust steam passes through tubes or fins for cooling, and the condensate is returned to the boiler to be reheated into steam to propel the turbine. The system is completely closed to the atmosphere, and there is no contact between the outside air and the steam or the resulting condensate. Because of the heavy reliance of dry cooling on ambient air temperatures and the lower efficiency of heat transfer through convection and radiation, dry cooling systems are much larger and therefore more expensive[58] than wet cooling systems for a given cooling load. While dry cooling systems are not uncommon in the U.S. (see DCN 10–6943), they have typically been built at smaller generating units or in areas where limited water supplies might make

[54] In addition, a smaller portion of the heat is also removed through direct contact between the warm water and the cooler surroundings; this is known as sensible heat.

[55] Cooling towers must replace water lost to evaporation; this is referred to as makeup water. Additionally, as water evaporates, dissolved solids and other materials gradually increase in concentration in the circulating water and can cause operational difficulties. To minimize these issues, cooling tower operators continually discharge a small portion of the circulating flow and replace it with makeup water; this is referred to as blowdown.

[56] Modular cooling tower units provide an additional cooling tower alternative. Modular cooling towers resemble mechanical cooling towers, but are portable, typically rented for short-term periods and quickly assembled.

[57] Dry cooling systems blow down some of the circulating water in the cooling system to prevent the buildup of materials in the condenser. However, the volume of makeup water is extremely low—a dry cooling system typically reduces intake flows by 98–99 percent over a comparable once-through cooling system.

[58] The construction and capital costs for dry cooling towers have been reported as four to 10 times more expensive as wet cooling towers, and the auxiliary power consumption for dry cooling is higher than for wet cooling. See DCN 10–6679. EPA recognizes that costs for dry cooling may have decreased since this document was written, but costs for dry cooling are still markedly higher than those for wet cooling. The other challenges associated with dry cooling remain unchanged.

uncertain the availability of either once-through cooling or wet cooling make-up water, such as the arid southwestern United States. Dry cooling has not been used for circulating water cooling at nuclear facilities.

iii. Hybrid Cooling Systems

In certain applications, a facility could choose a hybrid cooling system design that incorporates elements of both wet and dry cooling. Typically, the base of the tower functions as a wet cooling system and the upper portion as a dry cooling system. The most common reason for this design is to reduce the visible plume of water vapor, which is accomplished by recapturing some of the water vapor evaporated in the wet portion of the tower. This design is also usually much shorter than natural draft wet towers and can also include plume abatement controls. Another version of the hybrid cooling system also includes both wet and dry cooling sections, but the dry section functions to directly cool a portion of the turbine exhaust steam. The benefits of such a tower may include substantial water savings as well as reduction in power plant efficiency losses associated with just dry cooling.

iv. Impoundments

Impoundments are surface waterbodies that serve as both a source of cooling water and a heat sink. As with cooling towers, impoundments rely on evaporative cooling to dissipate the waste heat; a facility withdraws water from one part of the impoundment and then discharges the heated effluent back to the impoundment, usually in another location to allow the heated water time to cool. Depending on local hydrology, impoundments may also require makeup water from another waterbody. Impoundments can be man-made or natural, and can be offset from other water bodies or as part of a ''run of the river'' system (the latter are sometimes referred to as cooling lakes).

2. Exclusion and Collection Technologies

Over the last several decades, numerous technologies in addition to specific flow reduction measures such as velocity controls and closed-cycle cooling have been developed in an effort to minimize impingement mortality and entrainment associated with cooling water intake systems. The following section summarizes the most widely used technologies and the most effective and best-performing technologies, such as screens, barrier nets, aquatic filter barriers, and collection and return systems. For additional detailed information on these technologies and others, also see Chapter 6 of the TDD, ''California's Coastal Power Plants'' report (DCN 10–6964) or EPRI's ''Fish Protection at Cooling Water Intake Structures'' report (DCN 10–6813).

a. Screens

There are several types of screens that offer protection that are discussed below, including traveling screens and cylindrical wedgewire screens. Not described in this section are fixed screens that are used simply for the purpose of debris exclusion but do not offer protection to fish, larvae, and eggs.

i. Traveling Screens

Traveling screens are a technology in place as part of most cooling water intake structures. These screens originally were designed to prevent debris from entering the cooling water system, but they also prevent some fish and shellfish from entering the cooling water system. Traveling screens have been installed in a wide variety of operating and environmental conditions: salt water, brackish water, freshwater, and icy water, as well as river, lake and tidal applications. On the basis of the technical survey, EPA found 93 percent of electric generators and 73 percent of manufacturers employ traveling water screens or other intake screens. Many types of traveling water screens (e.g., through flow, dual flow, center flow) are used. The most common design in the United States is the through flow system. The screens are installed behind bar racks (trash racks) but in front of the water circulation pumps. The screens rotate up and, while out of the water, debris and impinged organisms are removed from the screen surface by a high-pressure spray wash. Screen wash cycles are triggered either manually or by a certain level of head loss across the screen (indicating clogging). By definition, this technology works by collecting (i.e., impinging) fish and shellfish on the screen. Ideally, traveling screens would be used with a fish handling and return system, as discussed below. The return system should be regularly maintained to prevent biofouling or other blockages that may affect survival.

ii. Cylindrical Wedgewire Screens

Unlike traveling screens, cylindrical wedgewire screens are a passive intake system. Wedgewire screens, also called ''V'' screens or profile screens, consist of triangular-shaped wires arrayed on a cylindrical framing system, with long slots between the wires, lengthwise along the screen. Slot sizes for conventional traveling screens typically refer to a square opening (⅜ inch by ⅜ inch) that is punched, molded, or woven into the screen face. Wedgewire screens are constructed differently, however, with the slot size referring to the distance between longitudinally adjacent wires. These screens are designed to have a low through-slot velocity (less than 0.5 fps or 0.15 meter per second) and typically have smaller slot sizes than a coarse mesh traveling screen. The entire wedgewire structure is submerged in the source waterbody. (See Chapter 6 of the TDD for an illustration of these screens.)

When necessary conditions regarding placement in the waterbody are met, these screens exploit physical and hydraulic exclusion mechanisms to achieve consistently high impingement reductions, and as a result, impingement mortality reductions. Wedgewire screens require an ambient crossflow current to maximize the sweeping velocity provided by the waterbody. The screen orientation allows the crossflow to carry organisms away from the screen allowing them to avoid or escape the intake. Lower intake velocities also allow fish to escape from the screen face. Entrainment reductions can also be observed when the screen slot size is small enough and intake velocity is low enough to exclude egg and larval life stages.[59] Limited evidence also suggests that extremely low intake velocities can allow some egg and larval life stages to avoid the intake because of hydrodynamic influences of the crossflow. Therefore, performance is dictated largely by local conditions that are further dependent on the source waterbody's biological composition. Costs of wedgewire screens increase significantly as slot size and design intake velocity decrease because the cumulative size of the screen (or number of screens) must grow in order to accommodate the same flow of cooling water. Wedgewire screens can also employ cleaning and deicing systems such as air-burst sparging to help maintain open intake structures and low intake velocities.

According to data from the industry questionnaire, EPA's site visits, and industry documents, dozens of facilities across the United States employ cylindrical wedgewire screens. However, wedgewire screens are not feasible for all facilities, particularly where intakes are in shallow water or have limited shoreline frontage. Also,

[59] Note that this is entrainment exclusion and not necessarily related to the survival of entrainable organisms.

wedgewire screens might not be feasible where the size and number of wedgewire screens would interfere with navigation of vessels. As described above, locations also need to have an adequate source water sweeping velocity. Most of the performance data for wedgewire screens is based on coarse mesh slot sizes with an intake velocity of 0.5 fps. Because it is extremely difficult to measure impingement and entrainment reductions in the field, most performance data for wedgewire screens is based on barge and lab studies.[60] EPA does not have data on the performance of fine mesh wedgewire screens on entrainment survival. Consequently, EPA has considered wedgewire screens only for impingement mortality. For additional discussion of the specific design and operation of cylindrical wedgewire screens, see Chapter 6 of the TDD. The following section discusses the importance of mesh size to impingement mortality and entrainment reductions.

iii. Screen Mesh Size Considerations

Coarse Mesh

Coarse mesh traveling screens are the typical traveling screen fitted on the majority of cooling water intakes. A large number of facilities have intake screens with ⅜-inch (9.5 mm) mesh panels.[61] This size mesh is common because, as a general rule, the maximum screen slot size is never larger than one-half of the condenser tube diameter (the condenser tubing is the narrowest point in the cooling water system and, as such, is most susceptible to clogging from debris), and this tubing is typically ¾ or ⅞ inch in diameter. Mesh of ⅜-inch (roughly 9.5 mm) size does not prevent entrainment and without any other precautions can lead to high mortality of impinged fish. Coarse mesh traveling screens have been in use by both power plants and manufacturers for more than 75 years and represent the baseline technology. Similarly, the majority of successful wedgewire installations are coarse mesh.

Fine Mesh

Fine mesh traveling and wedgewire screens are similar to coarse mesh screens. The only difference is the size of the screen mesh. Fine mesh traveling screens have been in use since the 1980s. Typically, facilities have incorporated fine mesh in an effort to reduce entrainment. The mesh size varies, depending on the organisms to be protected, but typically range from 0.5 to 5 mm. Data in the record demonstrate that entrainment typically decreases as mesh size decreases. Slot sizes larger than 2 mm do not prevent eggs from passing through the screen. Converting traveling screens from coarse mesh to fine mesh often requires adding more screens in order to maintain the same flow, since the open area of a fine mesh screen is less than the open area of a coarse mesh screen. Adding more screens is one way to maintain that flow.[62] EPA estimates that as many as 17 percent of existing intakes could not be enlarged to accommodate a 2 mm mesh, and as many as 55 percent of existing intakes could not accommodate a 0.5 mm slot size under conditions of low-intake velocities. For these reasons, fine mesh screens are available for some locations, but they are not the best performing technology and are not an available technology for the industry as a whole for IM&E. For more details, see Chapter 6 of the TDD.

b. Barrier Nets

Barrier nets are nets that fully encircle the intake area of water withdrawal, from the bottom of the water column to the surface, and prevent fish and shellfish from coming in contact with the intake structure and screens. According to data from the industry questionnaire (as of the year 2000), at least a half dozen facilities employ a barrier net. Typically, barrier nets have large mesh sizes (e.g., ½-inch or 12.7 mm)[63] and are designed to prevent impingement. Because of the large mesh size, they offer no reduction in entrainment. They are often deployed seasonally, wherever seasonal migrations create high impingement events or to avoid harsh winter conditions that jeopardize integrity of the net. Barrier nets also prevent impingement of shellfish on the intake traveling screen. Shellfish such as crustaceans can pose a unique issue for traveling screens; shellfish are not impinged, but they can attach to the traveling screen surface and are not removed from the traveling screen by pressure wash sprays. Barrier nets have been shown to be helpful in this regard.

c. Aquatic Filter Barriers

Aquatic Filter Barriers (AFBs) consist of water-permeable fabric panels with small pores (less than 20 microns). They are similar to barrier nets in that they extend throughout the area of water withdrawal from the bottom of the water column to the surface. AFBs reduce both impingement mortality and entrainment because they present a physical barrier to all life stages. The surface area of an AFB is quite large compared to a traveling screen, allowing for extremely low water velocities. The low velocity allows non-motile organisms to drift away. EPA is aware of one power plant that used an AFB but notes that this facility recently ceased operations.[64] EPA has updated performance data for AFB for small flow intakes, but it does not have enough data to evaluate the technology at large intakes or in all water bodies. EPA does not consider this technology to be demonstrated and available as a nationwide BTA candidate.

d. Collection and Return Systems

Conventional traveling screens were not designed initially with the intention of protecting fish and aquatic organisms that become impinged against them. The organisms were often handled in the same manner as debris on the screens. Marine life can become impinged against the screens because of high intake velocities that prevent their escape. Prolonged contact with the screens can suffocate organisms that are unable to escape or result in descaling injury and latent mortality. Organisms that survive initial impingement and removal are not always provided with a specifically designed mechanism to return them to the waterbody and are often handled in the same way as other screening debris. Other objects, such as leaves and trash, that are collected on the screen are typically removed with a high-pressure spray and deposited in a dumpster or debris return trough for disposal. Exposure to high pressure sprays and other screening debris can cause significant injuries that result in latent mortality or increase the susceptibility to predation or re-impingement. Screens are rotated periodically on a set time interval or when the pressure differential between the upstream and downstream faces exceeds a set value.

Conventional traveling screen systems have been modified to reduce impingement-related mortalities with

[60] EPA expects that properly designed wedgewire screens have a design intake velocity of 0.5 fps, therefore intakes with wedgewire screens will meet the impingement standard at § 125.94(c)(2) and there is no need to separately pre-approve this technology as in the remanded 2004 Phase II rule.

[61] In today's rule the EPA recognizes that ½- by ¼-inch mesh is used in some instances and perform comparably to the ⅜-inch square mesh.

[62] A facility could also increase its intake velocity.

[63] Barrier net mesh sizes vary, depending on the configuration, level of debris loading, species to be protected, and other factors.

[64] This facility ceased operations for reasons unrelated to any requirements or measures addressing cooling water intake impingement or entrainment.

collection and return systems. In its simplest form, these systems are composed of a return flume or trough with sufficient water volume and flow to enable impinged organisms to return to the source water. Return systems should be designed to avoid predation and latent mortality while organisms are in the flume, maintain an appropriate water depth in the flume for high survival of the organisms, located at an appropriate elevation to avoid large drops of the organisms back to the surface water (or large hydraulic jumps if the end of the return is below the water's surface), and sited to avoid repeated impingement of the organisms by the intake structure.

Some facilities have modified conventional coarse mesh traveling screen systems to reduce impingement mortality. They did this by removing fish trapped against the screen and returning them to the receiving water with as few injuries as possible. The first modified screens, also known as Ristroph screens, feature capture and release modifications. In the simplest sense, these screens are fitted with troughs (also referred to as buckets) containing water that catch the organisms as the screen rises out of the water and the organisms are sprayed off of the screen. The return component consists of a mechanism to remove impinged fish gently from the collection buckets, such as a low-pressure spray. The buckets empty into a collection trough that returns fish to a suitable area in the source waterbody. These modified screens have shown significant reductions in impingement mortality compared with unmodified screen systems.

Data from early applications of the Ristroph screen design showed that while initial survival rates might be high at some installations, latent mortality rates were higher than anticipated. This indicated that organisms could sustain significant injuries during the impingement and return process that were not immediately fatal. According to a study conducted by Ian Fletcher in the 1990s (see DCN 5–4387), industry identified several additional critical screen modifications to address latent mortality. These included redesigning the collection buckets to minimize turbulence, adding a fish guard rail/barrier to prevent fish from escaping the collection bucket, replacing screen panel materials with ''fish-friendly,'' smooth woven mesh, and using a low-pressure wash to remove fish before any high-pressure spray to remove debris. The Fletcher analysis also identified longer impingement duration, insufficient water retention in the buckets, and exposure to the air and temperature extremes as conditions that could negatively affect fish survival. Finally, these findings indicate that modified Ristroph screens must be rotated continually instead of the periodic rotation schedule common with conventional screen systems. Performance data for modified traveling screens with fish-friendly fish return systems, sometimes referred to as post-Fletcher modifications, show low levels of impingement mortality across a wide variety of waterbody types and fish species. Additionally, recently developed screen designs (such as the Passavant Geiger, Beaudrey WIP, and Hydrolox screens) have also shown promise in reducing impingement mortality.

For additional and more detailed discussion of the specific design and operation of these screen modifications, see Chapter 6 of the TDD.

3. Other Technological Approaches

a. Intake Location and Velocity Caps

The most common intake location for a cooling water intake structure is along a shoreline. In some water bodies, however, shoreline locations are thought to have a potential for greater environmental impact because the water is withdrawn from the most biologically productive waters, especially those containing a high density of organisms in earlier life stages, such as nursery areas. Some facilities employ an offshore intake to withdraw water from less biologically productive areas to reduce impingement and entrainment relative to intakes in more productive shoreline areas. Reduction in impingement mortality and entrainment due to intake location is highly site-specific. The greatest potential for reductions is found with far offshore locations at distances of several hundred feet, not found on many rivers and streams. Both depth and the offshore location must be evaluated to determine whether fish densities and species distribution there are substantially different than those near the shoreline. Two areas where far offshore locations are commonly used today are the oceans and Great Lakes.

EPA found that several offshore intakes are fitted with a velocity cap.[65] Velocity caps are a physical structure rising vertically from the sea bottom and are placed over the top of an intake pipe. Intake water is withdrawn through openings in the velocity cap so that it converts the direction of water flow into the pipe from vertical to horizontal. The velocity cap does not act to reduce the velocity,[66] but the horizontal flow provides a physiological trigger in fish, which induces an avoidance response to reduce impingement mortality. The velocity cap further serves to limit the zone of influence of the intake to the depth level at which the velocity cap is situated, thus affecting only the life stages that live at that depth. Velocity caps are also usually equipped with supports and bar spacing selected to prevent larger aquatic organisms (e.g., sea turtles or marine mammals) from entering the intake pipe. Because velocity caps operate under the principle that the organisms can escape the current, they do not offer entrainment reductions over and above those achieved by being located offshore. Reductions in entrainment observed with velocity caps occur because of the difference in organism densities in far offshore deep water compared to a surface intake at the shoreline.

Far offshore velocity caps have limited application in oceans and the Great Lakes, are not available in other water bodies, and are therefore not available as a candidate for a national BTA. However, the technology is a demonstrated high performing technology, and is therefore included as a compliance alternative for those facilities where the technology is available. For additional and more detailed discussion of the specific design and operation of offshore intake locations and velocity caps, see Chapter 6 of the TDD.

b. Reduced Intake Velocity

Impingement mortality can be reduced greatly by reducing the through-screen velocity in any screen.[67] Reducing the rate of flow of cooling water through the screen (through-screen velocity) to 0.5 fps or less reduces impingement of most fish because it allows them to escape the intake current. (See 66 FR 65274 [December 18, 2001] and DCN 2–028A, EPRI's ''Technical Evaluation of the Utility of Intake Approach Velocity as an Indicator of Potential Adverse

[65] Others can be fitted with a cylindrical wedgewire screen, or might simply be an open pipe.

[66] EPA's data show that velocity caps operate at velocities above and below the 0.5 fps and can be effective using either design.

[67] Limited lab studies indicate that entrainment also can decrease as through-screen velocity decreases and that through-screen velocity can have an effect on entrainment survival rates, although such data is extremely variable by species (see DCN 10–6802 and DCN 10–6803). In any case, EPA does not consider a reduced intake velocity as an effective technology for reducing entrainment, because entrainable organisms generally lack motility.

Environmental Impact Under Clean Water Act 316(b).'') As a result, some facilities have designed and operate their modified traveling screens or wedgewire screens so as not to exceed a through-screen velocity of 0.5 fps. Swim speed studies demonstrate that for most facilities, an intake velocity of 0.5 fps or less will result in 96 percent or better reductions in impingement mortality for most species. EPA notes that preliminary results from recent studies of fine mesh screens suggest that at even lower intake velocities such as 0.25 fps, some hydrodynamic influences may reduce entrainment mortality even more, because flow dynamics are nonlinear. It is unclear as to whether such observations hold true when cooling water withdrawals (water volumes) are large. While higher intake velocities are sufficiently protective for some species of fish, the higher intake velocities are not necessarily protective of all life-stages. For example, younger fish may not be strong swimmers or may have not a developed avoidance response. Therefore higher intake velocities are not a high performing technology. As noted previously, low intake velocity has limited application, and is therefore not available as a candidate BTA technology. However, the technology is a demonstrated high performing technology, and is therefore included as a compliance alternative for those facilities where the technology is available.

D. Technology Basis for Today's Final Rule

As described above, EPA examined the full range of technologies that reduce impingement or entrainment or both. From an assessment of all factors, EPA identified one technology that is best technology available for minimizing the adverse impacts of impingement mortality at existing facilities: modified traveling screens with a fish-friendly fish return. EPA identified no single best technology that is available for minimizing entrainment at existing facilities for today's final rule. For new units at existing facilities, EPA identified mechanical draft wet cooling systems as BTA for both impingement and entrainment.[68]

EPA did not identify any single technology or group of technology controls as the basis for establishing the national BTA standard for entrainment for existing units. Instead, EPA has established a national BTA standard for entrainment for existing units that requires determination of BTA entrainment requirements on a site-specific basis in a structured permitting setting. The framework for determining entrainment requirements provides for the consideration at a minimum of certain specified factors that must be considered in the Director's determination of the BTA controls.

1. Alternative Impingement Mortality Standards for Existing Units

After considering all factors identified above, EPA has concluded that modified traveling screens, such as modified Ristroph screens and equivalent modified traveling screens with fish-friendly fish returns, are a best technology available for minimizing impingement mortality.[69] These screens use ⅜ inch, or similar, mesh with collection buckets designed to minimize turbulence, a fish guard rail/barrier to prevent fish from escaping the collection bucket; ''fish-friendly,'' smooth, woven or synthetic mesh; and a low-pressure wash to remove fish before any high-pressure spray to remove debris. The fish removal spray must be of lower pressure, and the fish return must be fish friendly, provide sufficient water and minimize turbulence. Modified traveling screens generally must be rotated continually to minimize aquatic exposure to impingement or to the air and thus obtain the highest reductions in impingement mortality.

Under the seventh option for complying with the BTA impingement mortality standard in today's final rule, a facility may rely on any technology it chooses so long as it demonstrates through biological compliance monitoring that it achieves the required 12 month impingement mortality performance standard[70] that EPA calculated based on the performance of the BTA technology—modified traveling screens with fish return. As discussed in the TDD (see, for example, TDD Exhibits 11–1 and 11–3), EPA based the 12 month percent mortality performance at § 125.94(c)(7) on data from facilities with traveling screens modified with features to improve the post-impingement survival of organisms such as smooth mesh, continuous or near-continuous rotation of the screens, buckets with guard rails, low pressure sprays for collecting fish, and fish return systems. The statistical basis for the 12 month impingement mortality performance standard includes 26 sets of 12 month survival percentages across 17 facilities demonstrating average impingement mortality rates ranging from 1.6 to 48.8 percent under conditions of 18 to 96 hour holding times. EPA established the 12 month percent mortality as 24 percent which is the arithmetic average of the impingement mortality rates from the 17 facilities. (This is consistent with EPA's proposed rule use of expected value of the beta distribution which can be calculated as the arithmetic average.)

Note: The 12 month impingement mortality performance standard means that no more than 24 percent of the impinged fish may die or alternatively at least 76 percent of the impinged fish must survive. EPA has occasionally used average annual limitations in the effluent guidelines program, most recently for the pulp and paper industry category (40 CFR 430, promulgated in 1998). In these instances, such as the technology-based BAT, EPA has defined the annual average limitations to be the average level demonstrated by the technology. Thus, EPA's approach to calculating the 12 month percent survival performance standard is consistent with past practice.

EPA recognizes that variability in the technology performance occurs due to changes in seasons, differing intake locations, higher mortality of certain species, and speciation found in different water bodies. By using a full 12 months of data, EPA has ensured that the resulting performance standard reflects the widest range of potential conditions present in EPA's database. EPA has further incorporated variability into the 12 month impingement mortality performance standard by basing it on data from 17 facilities which collectively performed more than 1,500 sampling events beginning as early as 1977. EPA notes that seven facilities had mortality rates less than 10 percent which provides evidence that facilities can, and have, maintained and operated their systems in a manner consistent with the performance standard. Another four facilities demonstrated impingement mortality rates significantly greater than the performance standard of 24 percent, however, EPA notes these facilities were

[68] Although EPA also identified velocity reduction to 0.5 feet per second or less as a candidate best performing technology for impingement mortality, EPA did not promulgate requirements to reduce intake velocity as BTA because it is not available at all facilities; however, the final rule does allow facilities to comply with intake velocity of 0.5 feet per second or less where available.

[69] EPA also considered recent screen designs (such as the Passavant Geiger, Beaudrey WIP, and Hydrolox screens) in evaluating impingement mortality data. In fact, the data set used to calculate the impingement mortality performance standard at § 125.94(c)(7) included a study of performance at a facility employing a Passavant Geiger screen, as well as a facility employing a Beaudrey WIP screen.

[70] In the record, EPA may also refer to this as the 12-month percent survival performance standard, % SPS, or the IM performance standard.

not required to optimize their technology performance as part of their study, and data collection was not required to achieve a certain level of performance.[71] In each study, EPA has identified elements of the technology operation that a facility could modify to achieve the 12 month percent impingement mortality performance standard. By using the 12 month percent impingement mortality performance standard, EPA has ensured that the resulting performance standard reflects the widest range of potential conditions present in EPA's database. In addition to those studies meeting the criteria for use in the 12 month percent survival performance standard calculations, there are further studies in EPA's record that provide additional performance data showing facilities can, and have, maintained and operated their systems in a manner consistent with the performance standard. EPA's record includes approximately 250 total studies related to impingement (see TDD Exhibit 11A–1).

Despite the overwhelming evidence that the 12 month percent survival performance standard of 24 percent was consistent with demonstrated performance for the best technology, EPA considered other alternatives that might incorporate more variability into a performance standard. EPA concluded that none of the alternatives were consistent with the need for facilities to demonstrate ongoing maintenance and operations over a long period of time, such as a year. Any alternative would be less stringent and would allow facilities to target long-term performance at a level that would be less than the optimal performance demonstrated by facilities with the technology in place. Further, the 12-month average impingement mortality performance standard will require a facility to actively evaluate performance during the 12 month period enabling the facility to optimize the technology to improve performance to counterbalance a result above the standard by one below the standard. If EPA had included a monthly average standard, it would have similarly needed to incorporate allowances for exceedances. Allowing for exceedances would have provided no incentive for improving operations for such exceedances. Therefore, EPA determined that the 12 month impingement mortality performance standard is sufficient to ensure performance consistent with best technology available. For this reason, EPA is not promulgating the monthly average that was included in the proposal. EPA's decision also is consistent with effluent guidelines where compliance with the monthly average limitation is not required for facilities subject to a longer term limitations such as an annual average limitation (e.g., pulp and paper 40 CFR 430 Subpart B AOX limitation).

EPA did not include in the final rule a number of requirements it had considered at proposal. The proposed rule would have required the seasonal deployment of barrier nets on estuaries and oceans as one element of the best technology available for minimizing the impingement mortality of shellfish. EPA has opted not to include any specific requirements for shellfish in the final rule, because EPA's review of the impingement data it used to develop today's final rule impingement performance standard includes data that incorporate shellfish survival as part of the performance standard. Further, as previously explained, the final rule provides for the Director to establish additional requirements where necessary.

EPA expects facilities complying with § 125.94(c) of today's rule by compliance option (7) to track their compliance with the 12 month percent impingement mortality performance standard on an ongoing basis and to proactively modify their technology or operations when a trend in the sampling suggests that they might be in danger of exceeding the 12 month percent impingement mortality performance standard in the future. The 12 month percent impingement mortality performance standard requires that impingement mortality not exceed 24 percent, calculated as the sum total number of fish that were impinged and died within the holding time divided by the sum total number of fish impinged for a 12-month period. EPA expects the ratio will be calculated based either on direct sampling counts, or based on both counts being extrapolated to represent annual counts. Because comments provided data that expanding the proposed 24 to 48 hour holding time requirement would generally not affect the observation of mortality due to impingement, the regulation allows for holding times from 18 to 96 hours.

As explained in more detail in Section VI.E and G below, the BTA technology for impingement does not minimize adverse environmental impacts associated with entrainment.

2. Entrainment Standards for Existing Units

As discussed below, EPA is not basing BTA for entrainment at existing units (that is, excluding new units at existing facilities) on closed-cycle recirculating cooling systems, a highly effective technology, because this technology is not available nationally and therefore does not represent BTA. EPA also has not identified any other effective, available and demonstrated candidate technology (or combinations of technologies) for entrainment reduction at existing units that is available nationally. For other entrainment technologies that might be available on a site-specific basis, see Section VI.E.2 below and Chapter 6 of the TDD. EPA did not select the other flow-reduction technologies (such as variable-speed drives and seasonal flow reductions) as the technology basis for entrainment control measures because these technologies are not uniformly best and are not broadly available for most facilities. Further, EPA has not identified a basis for subcategorizing existing units at which flow reduction technologies are feasible. The effectiveness, availability, and utility to a given facility of flow reduction or other entrainment reduction methods depends on site-specific geographical and biological conditions as well as operations of the facility. For example, this is the reason that EPA did not select relocation of a shoreline intake to far offshore as a technology basis for the BTA entrainment standard because this technology is not widely available for most facilities.

3. Impingement and Entrainment Standards for New Units at Existing Facilities

In contrast to existing units, installing a closed-cycle cooling system at a new unit is far less complex. The technology is also highly effective, generally achieving greater than 95 percent reductions in IM and E (mechanical draft (wet) cooling towers achieve flow reductions of 97.5 percent for freshwater and 94.9 percent for saltwater sources, or by operating the towers at a minimum of 3.0 and 1.5 cycles-of-concentration, respectively). These reductions in flow and the concurrent reductions in impingement and entrainment impacts are among the highest reductions in adverse

[71] For example, the Indian Point study states ''Because of the preliminary nature of this study, the effectiveness of the continuously operating fine mesh traveling screen has not been fully evaluated. Further studies incorporating controls for survival testing, regulation of spray wash pressures, collection efficiency tests, sampling during peak impingement periods for all important species, and better holding facilities, will provide more conclusive results.''

environmental impact possible at an intake structure.[72]

As described below, EPA has concluded that new units, in contrast to existing units, have much greater flexibility in terms of cooling system design, construction scheduling, and other factors that help minimize many of the negative aspects associated with closed-cycle cooling. For a more detailed discussion of this rationale, see below.

Under the final rule, a new unit at an existing facility, where the facility that withdraws or will withdraw more than 2 mgd when the new unit begins operating will have requirements similar to the requirements of a new facility in Phase I. Under the rule, a new unit (as defined at § 125.92(u) and described above) is required to have a flow limited to that which is commensurate with a closed-cycle recirculating system as it would be applied to the new unit. Today's final rule also includes an alternative approach (similar to Track II in Phase I), in which a facility could comply with the new unit standards by demonstrating that the technologies and operational measures employed will reduce the level of adverse environmental impact from any cooling water intake structure used to supply cooling water to the new unit to a comparable level to that achievable by implementing a closed-cycle recirculating system as defined at § 125.92(c)(1).

As discussed above, today's final rule defines a ''new unit'' at an existing facility as a stand-alone unit the construction of which commences after the effective date of today's final rule. New unit includes stand-alone units that are added to a facility for purposes of the same general industrial operation as the existing facility. This is in contrast to the definition of new facility, where a new facility does not include new units that are added to a facility for purposes of the same general industrial activity (40 CFR 125.83). The provision ''for purposes of the same general industrial operation'' is explicitly included in today's final rule definition of new unit at an existing facility for clarity. A new unit may have its own dedicated cooling water intake structure, or the new unit may use an existing or modified cooling water intake structure. Any unit at an existing facility that does not meet the new unit definition in today's rule is subject to the existing unit provisions.

EPA is adopting more stringent requirements for new units at existing facilities because such new units can be designed and constructed without many of the additional expenses and operational disadvantages associated with retrofitting an existing unit to closed-cycle cooling. For example, the incremental downtime that can be associated with retrofitting to closed-cycle cooling is avoided altogether at a new unit. In addition, when new units are added, the condensers can be configured for closed-cycle, reducing energy requirements (by substantially reducing the turbine backpressure energy penalty) and associated air emissions.

The three factors that led EPA to reject closed-cycle cooling as BTA (described below in Section E) are far less relevant for new units at existing facilities than for retrofitting existing units. This section discusses why EPA concluded that each factor is not a significant concern for new units, and why the record supports EPA's conclusion that closed-cycle cooling is an available and feasible technology for new units at existing facilities.

- Land Availability: In contrast to retrofitting the entire existing facility, the amount of space dedicated to closed-cycle for the new unit will be limited to the new unit rather than the entire facility. As a result, space constraints will be much less of an issue. New units also present the opportunity to design an optimized closed-cycle recirculating system for the new unit. Retrofitting an existing facility for the full intake flow of the facility would require a facility to identify (or possibly obtain) enough space to accommodate the cooling towers and associated equipment. Furthermore, new units and their corresponding cooling system can be built in stages rather than as a facility-wide retrofit, and since the new unit has not yet been built, there is no energy reliability concern (discussed further below).
- Air Emissions: EPA expects that emissions are significantly less of a concern at new units. The condensers will be optimized for closed-cycle, reducing energy requirements, and high-efficiency cooling towers can be incorporated into the design of the new unit, potentially allowing for smaller cooling towers to be installed. Turbine backpressure and the associated energy penalty can be substantially reduced in a new unit, but EPA acknowledges new units will still have auxiliary power consumption for fans. Therefore energy penalties and air emissions for tower operations can be minimized (though not eliminated). The emissions effects of requiring closed-cycle cooling at new units at existing facilities is similar to the effects of this requirement at new facilities and will not pose an unacceptable impact. For more information, see Chapters 6, 8, and 10 of the TDD. Further, the new unit is likely to be more efficient and emit less pollution than existing units, therefore net emissions are expected to decrease as new units replace older, less efficient units.
- Remaining Useful Plant Life: This is clearly not an issue for new units. A new unit has its full useful life remaining and thus would experience the maximum possible reductions in adverse environmental impacts throughout that useful life.

EPA does not expect that the requirements for new units at existing facilities will be a disincentive for facilities to repower existing units. The requirements only apply to stand-alone units. Requirements for entrainment at repowered units will thus be determined by the Director. EPA notes, however, for facilities that do choose to repower an existing unit, the costs of employing a closed-cycle cooling system are not a barrier, as described above. In fact, some facilities may find closed-cycle cooling to be less costly over the long-term. For example, in locations with limited water resources such that once-through cooling of an additional unit is not possible, overall reliability will be increased by using closed-cycle cooling systems.

EPA also recognizes that installing closed-cycle cooling systems at new units is a prevailing trend in industry, regardless of the regulatory requirements imposed by today's final rule. For example, see DCN 12–6672 in the record for today's rule, and DCNs 2–009 and 4–4023C (from the Phase I and Phase II dockets, respectively). These documents show that, on the basis of responses from facilities to the 316(b) industry questionnaire, facilities constructed in recent years are significantly more likely to employ closed-cycle cooling.

EPA recognizes that at some point in the future, every unit will be rebuilt, replaced or repowered (or retired). EPA projects that approximately 227 MW in new generating capacity per year, will be subject to the new unit provision, reflecting the general industry trend towards more efficient units. EPA's analysis projects an equivalent number of new units at manufacturing facilities will be constructed each year. See the Phase I rule for more information

[72] Note that these metrics are not explicit requirements for closed-cycle recirculating systems. They simply represent what EPA views as examples of characteristics of a properly operated and maintained closed-cycle recirculating system, as defined at § 125.92(c)(1).

regarding the affordability and barrier to entry analysis for new construction.

EPA notes that the new unit provision is an important element of the final rule, given the generally long lifespan of equipment at industrial facilities. For example, generating units at a power plant are often projected to have a 50-year lifespan. As a result, these facilities have a slow rate of ''evolution'' in adopting newer technologies. By requiring closed-cycle cooling in new units, EPA is ensuring (along with the Phase I rule) that no new once-through cooling units or facilities will be built.

E. Option Selection

After considering all factors identified above, EPA has concluded that it should base the BTA impingement mortality standard for existing units on the performance of traveling screens (e.g., modified Ristroph screens and equivalent modified traveling screens with fish-friendly fish returns)—the ''best technology available'' for minimizing impingement mortality. While there are a number of technologies that may perform as well as or better than traveling screens, these technologies were not feasible or available on a nationwide basis and thus were not the ''best technology available'' for standard setting purposes. Moreover, the impingement mortality standard for existing units provides a number of alternatives, including some of these other technologies, for compliance with the standard. EPA based the BTA impingement mortality standard for existing units on the performance of traveling screens because EPA concluded that this technology is effective, widely available, feasible,[73] and does not lead to unacceptable non-water quality impacts.

As explained above, EPA has not identified a technology or combinations of technologies that EPA concluded is ''best technology available'' for minimizing entrainment at existing units. EPA did not identify a technology for reducing entrainment that is effective, widely available, feasible, and does not lead to unacceptable non-water quality impacts. As such, EPA is unable to identify a nationally applicable BTA technology on which to base the BTA entrainment standard.

While EPA concluded that closed-cycle recirculating systems reduce entrainment (and impingement mortality) to the greatest extent and are the most effective performing technology, after careful consideration of multiple factors, EPA concluded that a closed-cycle recirculating system is not the ''best technology available'' for existing units within the meaning of the statute. It is not the best technology available on a national basis for minimizing adverse environmental impact and should not form the sole basis for the BTA standard for entrainment for the reasons explained below.

EPA also determined that there were no other ''available'' technologies for entrainment whose performance came close to that of closed-cycle recirculating systems. Further, while reduced intake velocity was a very effective control for impingement and may also reduce entrainment of some life stages of fish and shellfish, it does not significantly reduce entrainment of eggs and non-motile stages of larvae, and it is not physically available in many locations.

EPA has broad discretion in what factors it should consider when it determines the best technology available for minimizing the adverse environmental impacts of cooling water intake structures. As both the U.S. Supreme Court and the Second Circuit Court of Appeals have underscored, section 316(b) is ''sui generis,'' in a class by itself, unencumbered by ''specified statutory factors,'' *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 222 (2009); *Riverkeeper, Inc.* v. *EPA,* 358 F, 3d 174,187 (2d Cir. 2004). The Second Circuit explicitly rejected the argument that, because section 316(b) does not mention costs or other factors, EPA cannot give costs or other factors ''any'' weight in deciding what is the best technology. *Riverkeeper, Inc.,* 358 F.3d at 195. Furthermore, the Second Circuit recognized that EPA may base its decision on factors other than the effectiveness of a given technology in reducing impingement and entrainment and that EPA is entitled to deference in deciding what weight to give to the factors it considers in its BTA determination. *Riverkeeper, Inc.,* 358 F.3d at 196.

As noted, costs are one factor EPA may consider in its BTA determination. Here, while EPA did consider costs, costs were not a dispositive factor in the decision to reject closed-cycle cooling as the basis for a uniform national BTA entrainment standard. EPA did not reject closed-cycle cooling here either because it was not economically achievable or because the costs of closed-cycle would exceed its benefits. Instead, EPA rejected closed-cycle cooling as the technology basis for a uniform national BTA entrainment standard based on three factors: Land availability, air emissions, and remaining useful plant life as explained below.

Central to EPA's evaluation of the availability of closed-cycle as BTA was EPA's new understanding of the limitations of technologies other than closed-cycle in reducing entrainment. This presented EPA with a sharper choice than it had in the Phase II rule. For today's rulemaking, EPA took a second look at the data it had relied on in the Phase II rule, particularly in light of new data received since the Phase II rule. As a result, EPA learned that entrainment exclusion does not necessarily equate to entrainment survival (76 FR 22185), a key underpinning to EPA's BTA standards for entrainment in the remanded Phase II rule.

For the remanded Phase II rule, EPA had established national BTA performance standards for entrainment (and impingement) and included a number of different alternative means to achieve the standards. First, if a facility demonstrated that it could achieve reductions in flow associated with closed-cycle cooling, the facility met the BTA performance standards. Alternatively, a facility could demonstrate that it met the entrainment performance standards by a combination of installed technology and operational or other measures (including restoration measures). See 69 FR 41590 for a description of the final Phase II rule. Critical to EPA's decision to provide an array of choices for achieving the national BTA entrainment performance standards was a key factual conclusion. That conclusion was that a number of technologies would achieve performance reducing entrainment that was ''comparable'' to that of closed-cycle cooling. Consequently, for the Phase II rule, EPA established an entrainment performance standard of 60 to 90 percent based on data it reviewed for the Phase II rulemaking. See 69 FR 41598 for information on EPA's rationale for establishing compliance alternatives as part of the final rule.

In the Phase II rule, while EPA looked to the performance of closed-cycle as the benchmark against which it evaluated technologies for the BTA standards, EPA did not mandate the achievement of flow reductions that were in all cases equivalent to closed-cycle. Given that the available data supported the view that there were other much less expensive technologies that obtained significant reductions in entrainment, EPA was comfortable with a BTA standard that required achievement of a level of performance

[73] As part of the feasibility determination, EPA found that the costs associated with the IM standards are reasonable for the industry as a whole.

that was generally comparable though not equivalent to closed-cycle.

Since the Phase II rulemaking, EPA has received new data and learned that its understanding of entrainment technology performance was incomplete. Following the remand of the Phase II rule, EPA reexamined the data as well as new information on the performance of various entrainment control technologies it had previously reviewed. As a result, EPA determined that its conclusion regarding the capability of these other technologies—a conclusion on which the Agency had based the Phase II BTA performance standards—was no longer supported by the data EPA had before it.

There is a second additional consideration that further required EPA to focus renewed attention on how widely available closed-cycle cooling in fact was nationally. The Second Circuit decision in the Phase II rule removed restoration as a compliance option that EPA could consider. The decision underscored that restoration measures—one compliance option included in the Phase II rule—were not an available tool for complying with any 316(b) standard. However, at the time of the Phase II promulgation, EPA expected some facilities would use restoration in lieu of closed-cycle cooling, thus making closed-cycle or reductions commensurate with closed-cycle feasible (76 FR 41609). With the court decisions that restoration was not an available tool for compliance, compliance with a standard based on closed-cycle cooling alone is less feasible than EPA had expected at the time of the Phase II promulgation.

The changed landscape has narrowed markedly EPA's range of options with respect to the technology basis for today's BTA standards. The gap between the performance of the most effective entrainment reduction technologies (closed-cycle) and other less expensive technologies has widened significantly. EPA's narrowed range of compliance technology choices required EPA to look even more closely at the feasibility of closed-cycle cooling and reduced flow. As the Second Circuit has noted, EPA is clearly entitled to make its choice among alternative BTA technologies based on more factors other than just a technology's effectiveness in reducing impingement and entrainment. *Riverkeeper, Inc.,* 358 F.3d at 196. EPA identified three factors as significant in its decision to reject closed-cycle cooling as the sole technology basis for a national BTA entrainment standard. The three factors that collectively support rejecting closed-cycle cooling systems as a uniformly applicable BTA for existing facilities (except new units) are land availability, increased air emissions and remaining useful life.

1. Land Availability and Geographical Constraints Could Be a Factor on a Local Basis

While EPA's record indicated that the majority of facilities have adequate available land to retrofit to closed-cycle cooling, some facilities have land constraints.[74] While EPA originally estimated as many as 23 percent of facilities would not have enough space,[75] it observed on site visits that some facilities with a small parcel of land could still install closed-cycle cooling by using creative engineering solutions. On the other hand, EPA found that some facilities with large acreage could not feasibly install cooling towers because of local zoning or other local concerns. Thus, existing physical space at the facility was not the only factor contributing to uncertainty about land availability. Further review has shown that setback distances to mitigate noise and plume abatement (based on GPS mapping of residential areas) act as an additional constraint on land available for retrofitting to closed-cycle, and the cost of acquiring new land may be prohibitive for some facilities. Consequently, EPA estimates that 25 percent or more of facilities might have one or more constraints on land availability that would limit the ability to retrofit for cooling towers for the entire facility. EPA lacks adequate support to indicate that land constraints can be accommodated at existing facilities.

EPA also attempted to determine criteria based on the data in its record that would enable it to define a threshold for determining land availability on a nationwide basis, but was unsuccessful. For example, one analysis explored a threshold of approximately 160 acres per GW (gigawatt) below which a facility could not feasibly install cooling towers. Based on acres and the footprint of the facility and its surroundings (primarily those sites for which EPA conducted site visits), EPA found such an approach did not accurately identify which facilities could feasibly install closed-cycle.

2. Increased Air Emissions Could Be a Factor on a Local Basis

As previously discussed, retrofitting closed-cycle cooling (without also repowering) would result in increased air emissions of various pollutants, including particulates, sulfur dioxide, nitrogen oxides, mercury, and greenhouse gases, among others.[76] As a result of installing closed-cycle cooling structures, fossil-fueled facilities would need to burn additional fuel, thereby emitting additional PM, CO_2, SO_2, NO_X, and Hg. Two factors are responsible: (1) The need to compensate for energy required for operating cooling towers, and (2) slightly lower generating efficiency attributed to higher turbine backpressure when the condenser is not replaced with one optimized for closed-cycle operation when retrofitting existing units (also referred to as the energy penalty). While both of these factors contribute to increased air emissions, the larger contributor to projected increased air emissions is by far the energy penalty.

The impact of the increased emissions varies according to the local circumstances. The increased emissions could consist of stack emissions from increased fuel usage, cooling tower emissions, and plumes of water vapor. EPA's analysis suggested that the most significant impacts would be increased $PM_{2.5}$ emissions, which are associated directly with an increase in human health effects. EPA notes that cooling plume abatement and drift elimination technologies exist to address cooling tower emissions (and EPA included costs for such technologies in its analysis of Proposal Options 2 and 3). Further, EPA expects most effects of the particulates from cooling tower emissions would be limited to the immediate vicinity, confined wholly to the facility property. (See DCN 10–6954.) Therefore, EPA's primary concern is increased air emissions associated with additional fuel usage due to the energy penalty when retrofitting to cooling towers. EPA's review of emissions data from E–GRID (year 2005) suggests that impacts from these pollutant discharges could be significant. These include the human health and welfare and global climate change effects—all associated with a

[74] For example, in the case of fossil fuel facilities, scrubber controls may already have been required to comply with air rules and standards. This may reduce available land for closed-cycle.

[75] EPRI reported at least 6 percent of sites it evaluated were deemed ''infeasible'' because no space was available on which to locate a cooling tower. (DCN 10–6951) While EPA does not have access to the facility level data, EPRI's report supports EPA's conclusion that there is significant uncertainty around space constraints for facilities to install closed-cycle cooling.

[76] EPA recognizes that retrofitting closed-cycle cooling could be combined with other energy efficiency or pollution control technologies with the net effect of reducing air emissions; however, facilities could (and may be required to under other rules) install such technologies anyway, without converting to closed-cycle cooling.

variety of pollutants that are emitted from fossil fuel combustion. EPA is not able to quantify the frequency with which facilities could experience these local impacts, and therefore has concluded that the proper forum to address such local impacts fully is in a site-specific setting.

3. Remaining Useful Plant Life Could Be a Factor on a Facility Basis

A number of facilities are nearing the end of their useful life. Considering the long lead time to plan, design, and construct closed-cycle cooling systems, EPA determined that the Director should have the latitude to consider the remaining useful plant life in establishing entrainment mortality requirements for a facility. The remaining useful plant life, along with other site-specific information, will affect the entrainment reduction of closed-cycle cooling at a facility. For example, retrofitting to a closed-cycle system at a facility that is scheduled to close in three years will result in little entrainment reduction as compared to retrofitting to closed-cycle at a facility that will continue to operate for a significantly longer period.

The Decision To Establish a National BTA Standard Requiring Site-Specific Determination of BTA Entrainment Controls

Once EPA determined that a ''one-size-fits-all'' approach for entrainment for existing units is not generally feasible, it is appropriate to assess the required controls on a site-specific basis. Therefore, for existing units, EPA decided to adopt as the BTA entrainment standard an overarching regulatory framework under which the Director will establish BTA entrainment requirements on a site-specific basis following prescribed procedures and applying specified factors for decision-making prescribed in the regulation and as described below.

EPA concluded that site-specific proceedings are the appropriate forum for weighing all relevant considerations in establishing BTA entrainment requirements. Closed-cycle cooling is indisputably the most effective technology at reducing entrainment. Closed-cycle reduces flows by 95 percent and entrainment is similarly highly reduced. But given that EPA estimates that 25 percent of existing facilities may face some geographical constraints on retrofitting closed-cycle cooling and concerns about air emissions and the remaining useful life of a facility, EPA rejected the option of requiring uniform entrainment controls based on closed-cycle cooling. Instead, EPA elected to adopt as the entrainment standard a more flexible process in which, following consideration of a host of factors, the Director will prescribe 316(b) entrainment conditions appropriate at a particular site. For additional discussion on how a site-specific consideration of entrainment control requirements will be implemented, see Section VIII below.

EPA has several reasons for adopting the framework approach as the BTA standard for entrainment. As explained, the record shows that though closed-cycle cooling is effective, it is neither widely available nor feasible, and has significant unacceptable non-water quality impacts. While EPA cannot identify with precision the extent of these limitations on installing closed-cycle cooling systems nationwide, the record indicates that the circumstances are neither isolated nor insignificant. In light of this, EPA decided not to establish closed-cycle cooling as a presumptive BTA entrainment standard, pending a site-specific demonstration of the limitations. Instead, entrainment control requirements will be determined in a site-specific setting where the opportunity for local input in decision-making process will be maximized.

With regard to new units at existing facilities, based on the performance of properly operated cooling tower operation and the availability, feasibility and affordability of closed-cycle cooling at new units, EPA selected closed-cycle recirculating systems based on wet cooling towers as BTA. For a discussion of how the three factors (availability, feasibility and affordability) relate to new units, see Section VI.D.3. Consistent with the Phase I rule for new facilities, EPA has also included a compliance alternative allowing a facility to show performance comparable to that of a closed-cycle recirculating system. The new unit provisions in today's final rule are essentially the same as the requirements for new facilities under the Phase I rule.

F. Other Options Considered for Today's Final Regulation

EPA considered several other options for the BTA standards in developing today's rule, but ultimately rejected them. This section includes a discussion of these options, as well as some technologies that EPA considered, but did not include as compliance alternatives to the impingement mortality standards.

1. Proposal Option 4—Flexible Impingement Mortality Controls Similar to Final Rule at Existing Facilities With DIF of 50 mgd or More; BPJ Permits for Impingement Mortality and Entrainment at Existing Facilities With Design Intake Flow Between 2 mgd and 50 mgd; Site-Specific Entrainment Standard for Existing Facilities With DIF of 50 mgd or More; and Uniform Impingement Mortality and Entrainment Controls for All New Units at Existing Facilities Similar to Final Rule

At proposal, EPA's preferred option was Option 1, which was the option closest to today's final rule, and the starting point for the description of the changes to the rule in Section V above. At proposal, EPA also considered a variant of Option 1, called Option 4, which changed the impingement mortality requirements for facilities under 50 mgd from the performance standard in Option 1 to BTA as determined by best professional judgment. In the case of an existing facility below 50 mgd that added a new unit, the flow associated with the new unit would have been subject to the uniform entrainment requirements based on closed-cycle cooling. Finally, all existing facilities withdrawing more than 2 mgd of DIF would have been subject to entrainment requirements established on a site-specific basis, with the exception noted above for new units. The option analyzed here, called Proposal Option 4, is likewise similar to the final rule, but for the impingement standard based on BPJ for facilities between 2 and 50 mgd.

EPA ultimately rejected Proposal Option 4 because EPA found that the technologies on which the impingement mortality performance standard of today's final rule is based are available, feasible, demonstrated, and affordable for all regulated facilities on a national basis. Moreover, EPA's analysis showed that the difference in the total costs for the two options was nominal. Additionally, EPA notes that many facilities with a DIF under 50 mgd already use closed-cycle cooling and would have minimal burden under the final rule. These facilities would have no difficulty complying with the requirements EPA is establishing in today's final rule. Proposal Option 4, by not distinguishing between those facilities under 50 mgd that have already minimized adverse environmental impacts from those that have not, masks the actions that would have to be taken by the latter group to comply with today's final rule. In addition, the flexibilities introduced in the June 11, 2012 NODA and included

in today's final rule applied to all facilities, rather than taking the Option 4 approach at proposal of providing for more Director discretion for only the smaller withdrawing facilities. EPA also concluded that the data collection activities required under the final rule will be more protective of threatened and endangered species because they provide information on a larger number of facilities than Proposal Option 4 for consideration by the Director in permitting decisions. Lastly, EPA acknowledges that Proposal Option 4 is more burdensome to permitting authorities than is the final rule, as it requires more case-by-case decision making.

2. Proposal Option 2—Flexible Impingement Mortality Controls Similar to Final Rule at All Existing Facilities That Withdraw Over 2 mgd DIF; Site-Specific Entrainment Standard for Existing Facilities With DIF at or Below 125 mgd; Require Flow Reduction Commensurate With Closed-Cycle Cooling by Facilities Greater Than 125 mgd DIF; and Uniform Impingement Mortality and Entrainment Controls for All New Units at Existing Facilities

As previously explained, EPA assessed a number of different technologies that reduce impingement mortality and entrainment as the possible basis for section 316(b) requirements. EPA concluded that closed-cycle recirculating systems (based on wet cooling towers) are the most effective technology for reducing impingement mortality and entrainment. Notwithstanding that conclusion, EPA has decided not to establish a performance standard for impingement and entrainment based on closed-cycle recirculating systems for existing facilities. Furthermore, EPA found that there are no other effective technologies for entrainment that are available nationally. As described previously, each of the three factors for rejecting closed-cycle cooling as BTA for entrainment would also apply in the case of Proposal Option 2, despite the smaller number of facilities that would be subject to a requirement to retrofit. The technology basis for entrainment mortality controls for facilities greater than 125 mgd DIF under this option would have been wet cooling systems. The constraints discussed above that are associated with retrofitting a large portion of the universe of affected facilities, led EPA to conclude that requiring closed-cycle cooling on a uniform basis scale was not appropriate for a national regulation.

EPA notes that it proposed multiple options that included closed-cycle, and solicited comment on all aspects of closed-cycle cooling. After fully considering all comments and data, EPA still finds closed-cycle cooling is not the ''best technology available for minimizing adverse environmental impact'' required by section 316(b). Because of a combination of concerns over feasibility/availability, air emissions, and remaining useful life of the facility, EPA has rejected closed-cycle recirculating systems as the basis for national impingement and/or entrainment controls. Nor is EPA able to identify a subcategory for which these concerns no longer apply. Moreover, the complex interaction of all of these factors at individual sites does not lend itself to other regulatory options that would require closed-cycle recirculating systems with an ''off ramp'' if any of the factors were shown to result in unacceptable impacts because this would create a presumption for closed-cycle cooling rather than an equal balancing of all relevant factors. EPA decided not to establish any presumptive BTA entrainment outcome. EPA finds the entrainment standards framework in today's final rule will provide a consistent, more efficient, and more effective approach than standards with an ''off ramp.''

3. Proposal Option 3—Flexible Impingement Mortality Controls at All Existing Facilities That Withdraw Over 2 mgd DIF; Require Flow Reduction Commensurate With Closed-Cycle Cooling at All Existing Facilities Over 2 mgd DIF

Proposal Option 3 was, in many ways, the same as requiring closed-cycle cooling at all existing facilities. As described above, each of the three factors for rejecting closed-cycle cooling as BTA for entrainment would apply with equal force for Proposal Option 3. As a result, EPA has concluded Proposal Option 3, similarly, is not appropriate as BTA for entrainment.

4. Proposal Option 4 Variant

EPA also considered a variant of Proposal Option 4. As compared to Proposal Option 4, this variant did not include flexible alternatives for complying with the BTA impingement mortality standards (including pre-approved and streamlined alternatives), but did adopt the 50 mgd threshold to determine those facilities for which the Director has more discretion in determining BTA via BPJ. EPA analyzed this option to directly compare the effects of introducing flexible IM compliance alternatives at all facilities (as the final rule does) to the effects of introducing greater Director discretion for a subset of facilities, via BPJ permitting (as the Proposal Option 4 variant does). The preferred option at proposal, Option 1, was estimated to be more costly than Option 4 (Option 1 was estimated to cost $384 annually as compared with $327 million annually for Option 4). Under the analysis supporting the final rule the EPA is adopting today, however, today's final rule is estimated to cost $275 million annually in comparison with an estimated cost of $284 million annually for the Proposal Option 4 variant. Thus, EPA has concluded that providing flexible alternatives for compliance with the BTA IM standard at all facilities is both more effective at reducing costs to society and more readily justified as best technology available as compared to the approach of introducing greater Director discretion for only a subset of facilities (below 50 mgd). Hence, EPA rejected the Proposal Option 4 variant, and the approach of introducing greater Director discretion for only a subset of facilities (below 50 mgd).

5. Proposal Option 2 Variant

EPA also considered a variation of Proposal Option 2 that would have used 125 mgd AIF rather than 125 mgd DIF as the threshold. However, as described above, EPA rejected Proposal Option 2 and, for the same reasons, rejected this variant of Option 2.

6. Site-Specific Approach To Addressing Impingement

Many commenters (primarily from manufacturing facilities) commented that EPA should adopt a site-specific approach to addressing impingement mortality, similar to that employed for entrainment. As a result, EPA also considered an approach that would have established both impingement mortality and entrainment requirements fully on a site-specific basis taking into account for the particular facility, among other factors, those previously described as pertinent to EPA's 316(b) BTA determination. EPA rejected a fully site-specific approach for impingement controls principally because low-cost technologies for impingement mortality are available, feasible, demonstrated, and affordable for facilities nationally. Because technologies are available, a fully site-specific approach would place an unnecessary additional burden on state permitting resources. Moreover, the final impingement mortality standard includes several alternatives that allow site-specific demonstration that a particular technology performs at a level representing the best technology available for the site. EPA is instead promulgating a modified version of the

proposed rule, adding several elements of flexibility (i.e., compliance alternatives), and thus directly addressing many of the concerns raised by these commenters.

7. Pre-Approved Technologies

Many commenters requested that EPA pre-approve technologies that, once installed, would obviate the need for further regulatory conditions such as periodic monitoring. This is similar to the approach taken for cylindrical wedgewire screens in the remanded 2004 Phase II rule (see 69 FR 41693). EPA has adopted, in significant measure, commenters' suggestion in the BTA impingement mortality standard in today's rule by including several pre-approved and several streamlined compliance alternatives in the form of technologies that may be approved following a demonstration of required performance, so long as the facility shows that its alternative technology is operating in a manner that minimizes adverse environmental impacts. As an option for achieving the impingement mortality standards, a facility may install and operate specified impingement controls whose performance is comparable to or better than the technology EPA concluded was the ''best technology available'' for impingement mortality reductions:

- Closed-cycle recirculating systems, defined at § 125.92(c)
- Existing offshore velocity caps, defined at § 125.92(v)
- Technologies that result in a design intake velocity less than or equal to 0.5 fps, including most modern cylindrical wedgewire screens

Although this rule leaves the BTA entrainment determination to the Director, with the possible BTA decisions ranging from no additional controls to closed-cycle recirculating systems plus additional controls as warranted, EPA expects that the Director, in the site-specific permitting proceeding, will determine that facilities with properly operated closed-cycle recirculating systems do not require additional entrainment reduction control measures. Refer to Section E.1 for the EPA's rationale for selecting these controls.

G. Final Rule BTA Performance Standards

The rule establishes the following BTA standards for Impingement Mortality and Entrainment: Impingement Mortality Standards at All Existing Units at Existing Facilities that withdraw greater than 2 mgd DIF; an Entrainment Standard that requires site-specific entrainment controls determined by the Director for Existing Units at Existing Facilities that withdraw over 2 mgd DIF; BTA standards for impingement mortality and entrainment for new units at existing facilities. The previous section described the other options that EPA considered but ultimately rejected, and the basis for those decisions.

1. Impingement Mortality Controls for Existing Units at Existing Facilities for the Final Rule

Today's final rule provides a facility a number of alternatives for complying with the BTA impingement mortality standard. As discussed more below, EPA's BTA impingement mortality standard is based on EPA's conclusion that, on a national basis, modified traveling screens with fish-friendly return systems are the best performing technology available for impingement mortality reduction. But EPA is not requiring compliance with the BTA impingement mortality standards only through monitoring data that demonstrates achievement of the numeric reduction in mortality levels that EPA has determined well-operated modified traveling screen will achieve. Rather, the final rule allows facilities to comply by employing any of seven alternatives, including monitored compliance with a numeric impingement mortality performance standard.

Based on its review of available data and information submitted by commenters, EPA identified a number of other technologies and operational measures that could achieve equivalent, or better, performance to the impingement mortality reductions achieved with modified traveling screens that may be available for some sites. Thus, the final rule provides seven alternatives for complying with the BTA impingement mortality standards. These include three compliance paths based on pre-approved technologies, and three compliance paths that offer a streamlined approach to compliance. EPA expects the majority of facilities will use one of these six options to comply with the BTA impingement mortality standards (see Exhibit VIII–1 for more information).

The following pre-approved technologies will comply with today's rule and are associated with minimal monitoring and reporting of operational and/or design parameters. These technologies are (the numbering reflects the numbering in § 125.94(c)): Operating (1) a closed-cycle recirculating system; (2) a cooling water intake structure that EPA or the State NPDES permitting authority determines has a design maximum through-screen intake velocity of 0.5 feet per second; or (4) an existing offshore velocity cap. The general intent behind a compliance path based on a pre-approved technology is to provide a level of certainty to the regulated entity that they would be deemed compliant with the relevant rule requirements by designing, installing, and operating the technology as specified in the regulation. The three pre-approved compliance alternatives are each based on a particular technology approach. The permit for each compliance alternative will necessarily include criteria, design standards, and operational conditions specific to the pre-approved technology. The compliance paths based on pre-approved technologies in today's final rule include simplified permit application requirements (such as reduced or minimal study), documentation, or reduced monitoring, and will therefore result in greatly simplified implementation. In today's final rule, there are no biological compliance monitoring requirements for any of the three compliance paths based on pre-approved technologies.

Under the streamlined alternatives, a facility must demonstrate to the Director that traveling screens or some combination of technology controls or operational measures represent BTA performance under the conditions at the site. The three streamlined compliance alternatives are (the numbering reflects the numbering in § 125.94(c)) operating (3) a cooling water intake structure that EPA or the State NPDES permitting authority determines has an actual maximum through-screen intake velocity of 0.5 feet per second; (5) modified traveling screens whose demonstrated performance represents the best technology available for impingement reduction at the site; or (6) a system or combination of technologies or operational measures whose demonstrated performance is the best technology available for impingement reduction at the site. In order to demonstrate BTA performance, a facility will need to conduct a two-year site-specific study at the same time it conducts its source water characterization and Entrainment Characterization Study. This study must demonstrate that its modified traveling screens, or combination of technology controls and operational measures, have been adjusted and optimized so as to minimize impingement mortality. If the Director concludes that the facility has demonstrated optimized performance for its controls, the facility will have no

subsequent biological monitoring and reporting requirements as compared to a facility that complies using the impingement mortality performance standard. If the screens or other measures are not already installed, the Director may approve postponing the two-year study to be conducted after the entrainment determination has been made. These three streamlined compliance alternatives are based on a technology or suite of technologies and practices with more variable performance, and as such necessitate some degree of study, in order to optimize technology performance for the site-specific conditions encountered by a facility. A streamlined compliance alternative may require some level of monitoring, but once the optimal performance of the technology has been identified, conditions included in the permit specifying optimal operation ensure that the streamlined alternative is similar to or better than the impingement mortality performance standard. For example, the streamlined compliance alternatives also do not require biological compliance monitoring.

The seventh alternative (at § 125.94(c)(7)) for complying with the BTA impingement mortality standards requires the owner or operator to demonstrate compliance with the numeric impingement mortality performance standard through biological monitoring. Under this alternative, the owner or operator has the flexibility to choose any technology, including a new or innovative technology, provided the compliance monitoring demonstrates the performance standard is achieved.

Each of these seven alternatives is further described below. In addition, further discussion of how each of these alternatives will be implemented may be found in Section VIII.

a. Closed-Cycle Recirculating Systems

As described above, in Chapter 6 of the TDD, and in prior rulemakings, EPA has long recognized the benefits of flow reduction from closed-cycle recirculating systems for reducing impingement (as well as entrainment). A facility employing a closed-cycle recirculating system will typically reduce impingement by more than 95 percent. As a result, a facility may choose to comply with the BTA impingement mortality standards in today's final rule by demonstrating that it uses a properly operated and maintained closed-cycle recirculating system.

EPA estimates that approximately 18 percent of intake structures (i.e., those that already have an existing closed-cycle recirculating system, plus facilities located in California and New York, whose State regulations are at least as stringent as the final rule) will choose this alternative.

EPA does not have the data to determine precisely which impoundments are serving as part of a closed-cycle recirculating system as defined at 40 CFR 125.92(c)(2). However, EPA is aware that some facilities have created their impoundments in a water of the U.S. as part of their cooling system. EPA does not intend to eliminate the use of such lawfully created impoundments for their intended purpose, as doing so could result in a large number of stranded assets. If the cooling system with the impoundment minimizes the withdrawal of make-up water for cooling purposes, the Director may determine the cooling system meets the definition of a closed-cycle recirculating system.

b. Reduced Intake Velocity

EPA has long recognized the relationship between impingement and intake velocity. EPA conducted an analysis of fish swim speeds in the Phase I rule (see 66 FR 65274, December 18, 2001) and concluded that a design through-screen velocity of 0.5 fps is protective of 96 percent of motile organisms. However, EPA did not select intake velocity as the technology basis for the BTA impingement mortality standards. Although the performance of 0.5 fps intake velocity achieves greater reduction in impingement mortality than the technology on which the BTA impingement mortality standards are based, reducing a facility's intake velocity is not widely available or feasible for all existing facilities (see Chapter 6 of the TDD).

EPA is including reductions in intake velocity as an alternative for complying with the BTA impingement mortality standards through reduced intake velocity. A facility choosing this alternative must demonstrate that (1) the through-screen design velocity could not exceed 0.5 fps or (2) the actual intake velocity does not exceed 0.5 fps.

EPA estimates that approximately 34 percent of intake structures will choose this alternative. This estimate includes facilities that have an existing intake velocity of 0.5 fps or less, plus those facilities that are projected to install a technology that would reduce their intake velocity (larger intake, wedgewire screens, or variable speed pumps).

i. Design Intake Flow Basis

Consistent with EPA's determination in its earlier 316(b) regulatory efforts, the final rule allows a facility to comply with the BTA impingement mortality standards by demonstrating that its intake has a maximum through-screen design velocity of 0.5 fps. EPA concluded that facility's operating at this through-screen design velocity will protect the vast majority of impingeable aquatic organisms. Facilities choosing to comply with the BTA impingement mortality standards may not average velocity across multiple intakes at a facility.

ii. Actual Intake Flow Basis

EPA is also adopting a provision to allow facilities to demonstrate that the through-screen intake velocity at an intake structure does not exceed 0.5 fps on the basis of the intake's actual flow. (Again, note that facilities choosing this compliance alternative may not average intake velocity across multiple intakes.) In contrast to design flow above, a facility with an intake having a design through-screen intake velocity greater than 0.5 fps may be operated at a reduced capacity and therefore may withdraw cooling water at a velocity less than 0.5 fps. As long as the actual intake flow is such that the velocity remains at or below 0.5 fps, the reductions in impingement (and subsequently, impingement mortality) remain the same as a facility with a maximum design through-screen intake velocity of 0.5 fps. As described below, a facility will be required to monitor its intake flow and report this data to the Director to verify that intake flows do not exceed 0.5 fps. This approach also permits the Director to allow brief periods where the intake velocity will exceed 0.5 fps under extreme conditions.

c. Existing Offshore Velocity Caps

A number of commenters stated that EPA should consider existing offshore intakes fitted with velocity caps to be pre-approved and complying with the BTA impingement mortality standards. Locating submerged intakes in the deeper regions of larger waterbodies (particularly outside the littoral zone [77]) has the potential to reduce both impingement and entrainment (I&E), due to the lower densities of aquatic organisms as compared to a shoreline-based intake. EPA has identified 11 facilities with offshore velocity caps, and reviewed a number of studies documenting the performance of these

[77] The littoral zone extends from the shoreline to roughly the edge of the continental shelf.

facilities. These studies show that the impingement reduction performance of intakes submerged far offshore with velocity caps is dependent on site-specific conditions. The data show that solely locating an intake far offshore (i.e., without also employing a velocity cap) achieves a 60 to 73 percent reduction in impingement, and therefore does not achieve impingement mortality reduction comparable to that of well-operated modified traveling screens. Similarly, the data also show that velocity caps alone achieve a 50 to 97 percent reduction in impingement, and therefore could result in compliance performance comparable to or better than modified traveling screens in some, but not in all cases. However, the combination of an existing intake located far offshore (i.e., approximately 850 feet, as identified in the data for Nine Mile Unit 1 and Oswego Unit 5) in combination with use of a velocity cap will result in performance that exceeds the 12-month average impingement mortality performance standard (alternative seven described above).[78] [79] Because there is some amount of uncertainty in measuring distances from a shoreline, including but not limited to due to variations in water levels, storm swells, or tidal excursions, EPA has set the minimum distance offshore at 800 feet. As a result, the final rule at § 122.95(c)(4) allows a facility to comply with the BTA impingement mortality standards with an existing offshore intake with an existing velocity cap located at least 800 feet offshore, based on the performance data from the 11 identified facilities.

As noted above, the record shows all existing facilities with a velocity cap located at least 800 feet offshore will meet or exceed the 12-month average mortality performance standard of § 125.94(c)(7). EPA does not have data showing velocity caps located at lesser distances offshore will consistently achieve the impingement mortality performance standards, but is aware that some facilities may be able to achieve the impingement mortality standards through a combination of technologies that includes an offshore location. For example, the Office of Naval Research states that the littoral zone in ocean environments generally extends from the shore to 600 ft out in the water (ONR 2013). SEAMAP data in EPA's record shows installing the intake to depths where there is a lower concentration of living organisms (i.e., at least 65 feet) is also expected to decrease environmental impacts associated with intake operations. Therefore, the final rule allows facilities with intake structures at significant distances offshore to demonstrate the performance of their technology under § 122.95(c)(6), as further discussed below.

In addition facilities may opt to construct an offshore velocity cap at new locations. In those circumstances, the facility will need to demonstrate that theperformance of its velocity caps is the best technology available for impingement reduction under the alternative found at § 122.95(c)(6). For more information, see DCN 12–6601.

EPA estimates that approximately 1 percent of intake structures (i.e., those with an existing velocity cap meeting the definition at § 125.92(v) will choose this alternative.

d. Install Modified Traveling Screens

In the June 11, 2012 NODA, EPA discussed a streamlined compliance option that would provide facilities with a less burdensome alternative than the proposed rule. In the final rule, EPA has included an option at § 125.95(c)(5) for facilities that install traveling screens—the technology that forms the basis for the numeric IM performance standards. Under this option, the facility must demonstrate to the Director that it will install and operate modified traveling screens as defined at § 125.92(s) that are or will be optimized to minimize IM mortality at the site. The facility will also be required to submit an impingement technology performance optimization study (§ 122.21(r)(6)) which will include a 2-year optimization study for the intake technology. The facility will conduct 2 years of monthly impingement data collection, during which the facility will seek to optimize the technology performance to minimize impingement mortality. This study is intended to determine the optimal configuration and operating conditions of modified traveling screens and the fish handling and return systems for that intake to be consistently protective of aquatic organisms. During the course of the study, EPA expects that a facility will evaluate the interim results and make changes to the technology or operating conditions as needed to identify the most appropriate set of operational characteristics to ensure long-term success. For example, a facility could adjust the spray wash pressure, adjust the rotating speed of the screens, rotate the screens more frequently, re-angle the fish sluicing sprays, ensure adequate water in the return flume, design the fish return to avoid avian and animal predation on the aquatic organisms, and locate the fish return in such a way to avoid predation. Once a facility has optimized its technology performance, the study will identify operational measures that will serve as observable and enforceable permit conditions. As evidenced by the data used in determining the performance standard, by requiring facilities to study the conditions for optimized performance, many facilities will achieve impingement mortality reductions much greater than the 12-month average impingement mortality performance standard without significant additional investment. Biological data collection beyond this two-year study will not be required. The facility will simply be required to ensure that it is operating its technology under the identified conditions for optimized performance. If the Director concludes that the screens will achieve optimized performance, the Director will also incorporate operating conditions to ensure optimized performance as terms of the facility's NPDES permit.

As discussed in the NODA and Chapter 4 of TDD, EPA's data indicate that most facilities employ traveling screens.[80] EPA anticipates that, as a result, many facilities will view the streamlined screen-based compliance route as a logical choice for complying with the final rule. The streamlined option provides an opportunity for a large number of the affected facilities (i.e., those that do not meet the criteria for the other compliance technologies) to demonstrate that their intakes are effectively reducing impingement mortality while significantly reducing the burden on both facilities and regulatory agencies. EPA estimates that approximately 30 percent of intake structures will choose this alternative.[81]

EPA is aware that some facilities have no technologies installed and will choose to install modified traveling screens, and further that some facilities

[78] An existing facility may also choose to install a new offshore intake with a velocity cap, but such a facility would not automatically qualify as meeting the impingement requirements for the final rule. Such a facility would need to demonstrate equivalent performance to the impingement mortality performance standard.

[79] A velocity cap must also include bar racks or other devices to exclude large marine organisms (e.g., seals, turtles) from entering the intake structure.

[80] EPA's technical survey found that 93 percent of electric generators and 73 percent of manufacturers already use screens, the majority of which are traveling screens.

[81] While EPA's data shows 73 to 93 percent of facilities already use traveling screens, EPA notes that many facilities use more than one technology. For example, some of these facilities also have a low intake velocity, an offshore velocity cap, or cooling towers. EPA expects facilities will choose the IM compliance alternative corresponding to these pre-approved technologies before they will choose to comply via optimized performance of their traveling screens.

with traveling screens will choose to either retrofit to modified traveling screens with fish handling and returns. Obviously, the impingement technology performance optimization study cannot be undertaken until the technology is first installed. In this case the NPDES permit would be issued before the completion of the optimization study. EPA expects a permit will be issued that includes a schedule for both the technology installation and the required optimization study. As discussed earlier, the Director can establish interim measures as appropriate (40 CFR 125.94(b)).

e. System of Technologies as the BTA for Impingement Mortality

EPA recognizes that cooling water intake structures have a variety of configurations and facilities may choose to comply with the final rule by using more than one of the compliance approaches outlined above. In the June 11, 2012, NODA, EPA described an approach where facilities would be able to demonstrate ''credit'' toward meeting the impingement mortality requirements by reducing the total number of organisms impinged. EPA also intended for facilities to have the flexibility to employ any system of technologies or combination of operational measures to address impingement mortality so long as the performance of the selected impingement reduction measures represented the best technology available for the site. The final rule includes an alternative reflecting these objectives.

In the broadest sense, facilities have a number of options for reducing impingement mortality. Some may choose to comply using an approach where a single technology achieves the level of compliance necessary. Others may choose an approach of employing multiple technologies or operational measures, including reducing the number of organisms that are impinged or susceptible to being impinged. The following are examples of approaches for which a facility might be able to take credit for impingement reduction under this alternative:

- Partial closed-cycle cooling
- Variable speed pumps
- Seasonal outages (including standard maintenance outages that are specifically scheduled to avoid a biologically sensitive period)
- Certain impingement technologies that reduce the number of organisms exposed to the intake structure (e.g., diversions, louvers, barrier nets)
- Intake location
- Behavioral technologies (e.g., light or sound barriers) [82]

In each case, the technology employed reduces the number of organisms that potentially are impinged, resulting in a reduction in the number of organisms actually impinged (i.e., a reduction in the rate of impingement). By virtue of reducing the actual impingement, mortality caused by impingement is no longer a consideration—an organism that is never impinged cannot be killed by the intake structure. Some technologies work to reduce the intake flow, thereby reducing the potential organisms exposed to the intake. Others work to divert organisms away from the screens, either through a physical exclusion or by being placed in a less biologically productive area. EPA concluded that it is appropriate to recognize these reductions in impingement as a step in achieving a BTA impingement mortality reduction performance at a particular site. As a result, EPA expects the reduction in impingement will be treated as an equivalent reduction in impingement mortality, and will therefore be considered by EPA or the State NPDES permitting authority in evaluating whether the chosen technologies and operational measures represent BTA performance under the site's conditions. For example, an intake that operates infrequently due to the infrequent operation of the electric generating unit(s) it serves (such as a peaking unit) may use a relatively small amount of water on an annual basis when compared to the design capacity of the intake structure. This facility may choose to comply with the impingement mortality standard at § 125.94(c)(6) by demonstrating to the Director that the facility operates at an annual intake flow that is less than or equal to 24 percent of its design intake flow on an annual basis. This level of flow reduction could achieve a level of performance equivalent to or better than the impingement mortality performance standard in § 125.94(c)(7), and therefore could be considered to be compliant with the requirements of today's final rule. This demonstration may include design data, several years of past operating data, and dispatch modeling. These operating conditions would then be incorporated into the NPDES permit.

A facility complying under this part, must submit a impingement technology performance optimization study, which must include the calculated percent impingement mortality reflecting optimized operation of the system of technologies, operational measures, and best management practices and all supporting calculations. Total system performance is the combination of impingement mortality performance reflected in all of the following which apply:

- Rate of impingement—The estimated reductions in rate of impingement must be based on a comparison of the system to a once-through cooling system with a traveling screen whose point of withdrawal from the surface water source is located at the shoreline of the source waterbody. For impoundments that include waters of the United States, the facility's rate of impingement must be measured at a location within the cooling water intake system that the Director deems appropriate.
- Impingement mortality—If the demonstration relies in part on a credit for reductions in impingement mortality already obtained at the facility, two years of biological data collection must be provided, demonstrating the level of impingement mortality the system is capable of achieving.
- Flow reduction—If the demonstration relies in part on flow reduction to reduce impingement, the data must include two years of intake flows, measured daily, as part of the demonstration. This must include documentation of how the flow reduction results in reduced impingement.

The permitting authorities would consider this information shown in the two-year impingement technology performance optimization study that must be submitted under this alternative. For example, at facilities choosing to comply by demonstrating that they are operating below 24 percent of their intake capacity, or that they are peaking units, the Director should use this study to establish operating conditions that ensure that the intake continues to operate below 24 percent of its intake capacity or continues to serve only peaking units and that these units are not later used as intermediate or baseload units. The operating conditions and parameters identified in the study will then be incorporated in the facility's permit conditions. EPA estimates that approximately 17 percent

[82] For example, anadromous clupieds such as alewife, blueback herring, and American shad have demonstrated avoidance behaviors when exposed to high frequency sound. Deployments of this technology at Entergy's FitzPatrick Nuclear Station on Lake Ontario have resulted in a reduction of over 90 percent in impingement of alewife. In this case, EPA expects the Director would determine that impingement requirements regarding alewife have been addressed by the acoustical deterrent. The Director could disallow such a technology if it were deemed to have a negative effect on threatened or endangered species whose habitat includes the facility's intake location.

of intake structures will choose this alternative.

f. Comply With the Numeric Impingement Mortality Performance Standard

Facilities complying with the BTA impingement mortality standard by achieving the numeric performance standard at § 125.94(c)(7) will perform monthly compliance monitoring to verify that the 12 month percent impingement mortality resulting from operation of its intake is below the standard established in today's final rule. (For more details on complying with the impingement requirements, see Section VIII.) EPA expects that, save for future technologies or innovations, few facilities will avail themselves of this option.

2. Entrainment Controls for Existing Units at Existing Facilities

The BTA entrainment standard for the final rule establishes a framework under which EPA or the State NPDES permitting authority must establish site-specific BTA entrainment requirements for each facility in the scope of today's rule. EPA considered promulgating no further controls to address entrainment mortality, and to rely instead only on the BTA impingement mortality controls, which would achieve up to a 34 percent reduction in total AEI. EPA did not select this option as the basis for national BTA because, in EPA's view, some facilities either are having a significant impact as a result of entrainment or might be able to do more to control entrainment at costs that are low relative to benefits. In addition, EPA's data on entrainment at facilities are not sufficient to allow the Agency to categorize facilities requiring no additional controls for entrainment. Thus, the final rule by requiring prescribed information in the permit application will provide the Director with adequate information for decision making. Requiring a structured site-specific analysis of candidate BTA technologies for entrainment control will allow the Director to determine where it is appropriate to require such controls. One outcome of the site-specific analysis could be that the Director would determine that no other technologies beyond impingement controls are required for BTA entrainment reductions, either because they are not feasible or because the social costs of additional control measures are not justified by the social benefits.

In the case of site-specific entrainment controls for facilities withdrawing greater than 125 mgd AIF, the final rule requires facilities to also develop and submit an Entrainment Characterization Study and related supporting information, as described in § 122.21(r)(9)–(13) of today's rule, for use by the Director in establishing site-specific BTA. For facilities above 125 mgd AIF that also meet the definition of closed-cycle recirculating systems at § 125.92(c), the Director may reduce or waive some or all of this information.

EPA considered simply requiring this information of all facilities above 125 mgd AIF without authorizing Directors to reduce or waive this information. However, EPA also recognizes that, in some instances, these same facilities have already minimized adverse environmental impacts significantly. In such cases, there may be limited value to the Director requiring a full benefit-cost analysis, or even obtaining the Entrainment Characterization Study at § 122.21(r)(9).

EPA also considered not requiring this information of any facilities above 125 mgd AIF meeting the definition at § 125.92(c). First, EPA noted that even though these facilities meet the definition of a closed-cycle recirculating system, they may still withdraw at least 125 mgd, and in some instances withdraw considerably more than 125 mgd. This is not an insubstantial volume of water withdrawn for cooling, and in the case of inland waters this withdrawal may comprise a large proportion of that source waterbody. In addition to withdrawing large volumes of water, EPA recognizes that some facilities, particularly those meeting the definition at § 125.92(c)(2), potentially withdraw water at a rate similar to a once-through facility not withdrawing from an impoundment, with the potential to cause adverse environmental impacts similar to those of once-through cooling. The Director may find the information in § 122.21(r)(9)–(13) to be useful in determining whether additional controls are warranted. In these instances, the Director may decide to require the Entrainment Characterization Study at § 122.21(r)(9) first, in order to determine if other studies in § 122.21(r)(10) to (13) are also warranted.

Facilities at or under the 125 mgd AIF threshold must still provide certain information under the permit application requirements at § 122.21(r). The Director may require additional information from these facilities including some or all of the studies at § 122.21(r)(9)–(13) if there is reasonable concern regarding entrainment impacts at the facility. Where an owner or operator of a facility intends to comply with the BTA standards for entrainment using a closed-cycle recirculating system as defined in § 125.92(c), the Director may reduce or waive some or all of this information.

Facilities with a closed-cycle recirculating system as defined at § 125.92(c)(2) would still submit the studies at § 122.21(r)(9)–(13) if they withdraw greater than 125 mgd AIF, and if the Director has not waived the requirements. These facilities have cooling systems that include impoundments of waters of the U.S. where the impoundment(s) was constructed prior to October 14, 2014 and lawfully created for the purpose of serving as part of the cooling water system. This purpose must be documented to the Director's satisfaction in the project purpose statement of any required Clean Water Act section 404 permit obtained to construct the impoundment. In the case of an impoundment whose construction pre-dated the CWA requirement to obtain a section 404 permit, where alternative permitting documents were required, the facility must document the project's purposes to the satisfaction of the Director by some other license or permit obtained to lawfully construct the impoundment for the purposes of a cooling water system. EPA notes that for impoundments constructed in uplands or not in waters of the United States, no documentation of a section 404 or other permit is required. EPA received comments that such impoundments should be treated as closed-cycle cooling and has agreed to make this change. The Director would still make the determination that make-up water withdraws have been minimized. Further, EPA's data shows that many facilities that utilize impoundments as part of their cooling water systems may actually use a combination of cooling water systems (for example, detailed survey responses showed eight facilities with an impoundment in addition to other IM technologies). The requirement that these facilities provide the Director with certain information will help ensure that the Director has adequate information upon which to base a decision for these impoundments as to whether these facilities have adequate controls already or should be taking additional measures to protect the relevant waterbody.

The Entrainment Characterization Study will include information already collected to meet existing § 122.21(r)(4) requirements. In addition, under the permit application requirements being added today at § 122.21(r)(5) to (13), the facility will submit certain additional site-specific information. This will include an engineering study of the

technical feasibility and incremental costs of candidate entrainment mortality control technologies. The facility will also study, evaluate, and document the technical feasibility of technologies, at a minimum, including closed-cycle cooling, fine mesh screens with a mesh size of 2 mm or smaller, and water reuse or alternate sources; engineering cost estimates of all technologies considered; any outages, downtime, or other effects on revenue along with a discussion of all reasonable attempts to mitigate these cost factors; and a discussion of the magnitude of water quality and other benefits, both monetized and nonmonetized, of the candidate entrainment mortality reduction technologies evaluated. Finally, the information must include a discussion of the changes in non-water quality environmental impacts attributed to technologies and/or operational measures considered. The factors include, for example, increases and decreases in the following: Energy consumption, and air pollutant emissions including particulates and associated human health and global climate change impacts, water consumption, noise, safety (e.g., visibility of cooling tower plumes, icing), grid reliability, and facility reliability. For a thorough discussion of these study requirements, see Section VIII. The final rule also requires peer review of the Comprehensive Technical Feasibility and Cost Evaluation Study, Benefits Valuation Study, and Non-Water Quality and Other Impacts Assessment. Peer review of the Entrainment Characterization Study is not required. Note that the peer reviewed studies will rely on data gathered in the Entrainment Characterization Study. Peer reviewers will be selected in consultation with the Director, who can also consult with EPA and Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s).

Under the final rule, EPA expects that the Director will review the candidate technologies for entrainment mortality control that, at a minimum, includes closed-cycle recirculating systems, fine-mesh screens with a mesh size of 2 mm or smaller, and water reuse or alternate sources. In the decision about what additional entrainment controls (if any) to require, the Director will consider all the facility-specific factors in § 125.98(f)(2) and described above. At a minimum, the Director must provide a discussion explaining how issues concerning air emissions or land availability, insofar as they relate to the feasibility of adoption of an entrainment technology, and remaining useful plant life, were addressed in the site-specific determination. Under the final rule, the Director must issue a written explanation for the basis of the BTA entrainment determination for each facility. The Director's decision must include a written explanation that, at a minimum, includes consideration of the following factors: (i) Numbers and types of organisms entrained; (ii) impact of changes in particulate emissions or other pollutants associated with entrainment technologies; (iii) land availability inasmuch as it relates to the feasibility of entrainment technology; (iv) remaining useful plant life; and (v) social costs and benefits, which may include qualitative, quantified and monetized categories. The Director may also base the proposed determination on several other factors, including thermal effects and water consumption.

In addition to the information required for development of impingement controls discussed above, the regulation also requires, in the case of facilities withdrawing greater than 125 mgd AIF, submission of certain other information for use in the site-specific entrainment determination of BTA. The final rule also adds the permit application requirements at § 122.21(r)(9)–(13) to require the facility to prepare several studies, including an Entrainment Characterization Study, that will fully characterize the extent of entrainment at the facility. (For more details about the study, see above). In addition, under the final rule, the facility will provide detailed information on the other factors relevant to the Director's site-specific BTA determination. These will include information concerning the technologies available for control of such entrainment, the costs of controls, the non-water quality environmental impacts of such controls, the monetized and nonmonetized benefits of such controls, and the presence of any threatened and endangered species. The final rule does not limit the Director's discretion to consider non-water quality impacts in determining whether further entrainment measures are justified. EPA encourages, and the CWA requires, the public to have a role in the permitting process. Interested members of the public may submit written comments on a draft permit during the 30 day public notice and comment period and request a public hearing on a draft permit. For permits that are issued by EPA instead of a state, additional opportunities for public involvement include comment, and in some cases, a public hearing on a permittee's State Water Quality Certification under section 401 of the CWA. (See 40 CFR 124.10, 124.11, 124.12(a) and 124.17(a).) Therefore, the final rule clearly affords the public a meaningful opportunity for participation in the site-specific decision making to help ensure the soundness of both the information and subsequent determinations.

H. Economic and Benefit Analysis for the Final Rule

1. Economic Justification for the Final Rule

Pursuant to the principles in E.O. 12866 and E.O. 13563, EPA has assessed costs and benefits for the final rule and has reasonably determined that the benefits of the rule justify the costs. EPA has estimated the social cost of this rule to be $275 million annually. For more information on EPA's analysis of the rule's costs, see Section IX.

As described in more detail below in Section X, significant benefits are associated with the rule. These benefits include the annual reduction in impingement mortality of 652 million age-one equivalents for existing units. There are, in addition, other important benefits, many of which EPA cannot quantify. These benefits include effects on many shellfish species and nonuse values associated with the vast majority of fish and shellfish. The rule also requires establishing site-specific entrainment controls through a process in which specific environmental conditions and the localized benefits of entrainment reductions will be assessed along with the costs of controls. The information generated in the required studies will enhance the transparency of decision making and provide an opportunity for meaningful public participation, ensuring that decision making is based on the best available data. Overall, these requirements and subsequent Director actions under this rule will foster protection and restoration of healthy aquatic ecosystems that have important commercial, recreational, aesthetic and cultural values to their surrounding communities. Many of the benefits that will result from the rule are not monetized or quantified, and as a result the Agency's monetized benefits analysis underestimates the totality of the rule's benefits. On the basis of the record, EPA has determined that the impingement mortality and entrainment controls will result in benefits that justify the costs of the rule.

EPA also notes that it was able to generate only a partial estimate of

benefits for today's rule. In particular, EPA's analysis does not fully quantify or monetize certain potentially important categories of benefits, such as existence values for threatened and endangered species, secondary and tertiary ecosystem impacts, benthic community impacts, shellfish impacts and the impacts arising from reductions in thermal discharges that would be associated with closed-cycle cooling. Changes in fish assemblages due to impingement, entrainment and thermal effects are also not fully valued. These categories of benefits which are not fully valued are often referred to as nonuse benefits—i.e., benefits that people derive apart from using an affected resource, such as fishing. For example, nonuse benefits would include the value that individuals place on knowing that an aquatic ecosystem is healthy. EPA conducted a nonuse benefits transfer was based on a species that represents less than one percent of adverse environmental impacts. EPA developed and implemented an original stated preference survey to estimate total values (use plus nonuse values) for aquatic resource improvements under 316(b) regulatory options. EPA decided not to employ the survey results for purposes of decision-making and EPA has not accounted for values estimated from the survey in the quantitative comparison of costs and benefits. It is also important to note that EPA's stated preference survey was designed to estimate respondents' willingness to pay for changes in the health of fish populations and aquatic ecosystems and to be statistically representative at large (regional and national) scales; the results were not specifically designed to be statistically representative at the facility level for the assessment of benefits for individual site-level permitting decisions.

As noted at the outset, it is not always the case that private decision making regarding withdrawals of cooling water takes into account society's preferences for fish protection, nor are there market transaction opportunities for individuals to express their willing to pay for fish protection. Thus, despite the limited information on monetized social benefits, EPA has concluded that the benefits of today's rule justify the costs of today's rule.

2. Comparison of the Other Options

As discussed above, EPA considered three other primary options before selecting today's rule. See Section VI.F Other Options Considered for more detailed explanation of each option. Exhibit VI–1 illustrates a comparison of the total annualized social costs and benefits.

EXHIBIT VI–1—COMPARISON OF THE PRIMARY OPTIONS FOR 316(b)

[$2011 Millions at 2013, 3% discount rate]

Option	Total annualized social cost	Monetized benefits
Proposal Option 4	$251.8	$31.0
Final Rule	274.9	32.8
Proposal Option 2	3643.2	−1542.6

I. Site-Specific Consideration of Entrainment Controls

As described above, EPA is not promulgating uniform national requirements for entrainment for existing facilities. Instead, EPA is setting standards for entrainment that include a framework by which a facility will be subject to a site-specific determination by EPA or a State NPDES permitting authority of appropriate BTA requirements for entrainment. This section describes the process for determining section 316(b) requirements for an individual facility under the national BTA standard for entrainment. It describes the elements that the Director must consider in the permitting decision and how costs and benefits may be considered in such an evaluation.

1. Implementation of a Site-Specific Evaluation of Entrainment for Existing Facilities

The final rule requires a site-specific determination of BTA entrainment conditions in individual permits and prescribes the requirements for that permitting proceeding. The final rule includes permit application requirements for facilities with a cooling water intake structure. These requirements are designed to elicit the information the Director needs to determine the best technology for reducing entrainment for a particular facility, including information pertinent to an assessment of whether the benefits justify the costs of any particular control measures under consideration.

Today's final rule is a modification of the proposed approach of a site-specific BTA entrainment determination. It will result in one of two outcomes at any facility:

1. Determination that the facility must install additional control measures that reduce entrainment beyond that achieved by the currently installed equipment. These may include closed-cycle cooling and/or other technologies.

2. Determination that the facility's current, existing technology for entrainment achieves the entrainment BTA requirements under the national BTA standard.

Thus, EPA expects that, under this approach, there will be additional entrainment controls for some facilities and none for others. Even where the Director's determination requires no additional control measures, the Director may conclude the permit should include conditions that specify proper operation and maintenance of the installed technology.

EPA notes that in a number of areas of the country (California, Delaware, New York, and New England; see, for example, DCNs 10–6963 and 10–6841, and EPA Region I's Brayton Point), permitting authorities have already required or are considering requiring existing facilities to install or retrofit to closed-cycle cooling systems. These facilities are still subject to today's rule but the existing requirements have been taken into account in costing.

For facilities that withdraw more than 125 mgd, the rule generally requires that the facility conduct an entrainment study as part of its permit application. The study will indicate, at a minimum, the specific entrainment data collection methods, taxonomic identification to the lowest taxon possible, latent mortality identification, documentation of all methods, and quality assurance/quality control procedures for sampling and data analysis appropriate for a quantitative survey. Peer reviewers must be selected in consultation with the Director, who may consult with EPA and Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure. Data from the entrainment study is important to provide corroboration of any through-facility entrainment survival study results in § 122.21(r)(7) or from any other studies conducted.

The final rule also requires the permit application to include the following information as part of the entrainment study (which refers to the requirements at § 122.21(r)(9) through (13), as opposed to the Entrainment Characterization Study at § 122.21(r)(9)). For a thorough discussion of these study requirements, see Section VIII:

- An engineering study of the technical feasibility and estimated costs of all candidate entrainment control technologies, including closed-cycle cooling, fine-mesh screens with a mesh size of 2 mm or smaller, and water reuse or alternative sources;
- A discussion of any outages, downtime, or other effects on revenue

along with a discussion of all reasonable attempts to mitigate these cost factors

• A discussion of the magnitude of water quality benefits, whether qualitative, quantitative or monetized, of the candidate entrainment reduction technologies evaluated; thermal discharges; and

• A discussion of the changes in non-water quality environmental impacts and other factors attributed to technologies and/or operational measures considered, including, for example, increases and decreases in the following: Energy consumption; air pollutant emissions including particulates and their health and environmental impacts; noise; safety (e.g., visibility of cooling tower plumes, icing); electric grid reliability, and facility reliability.

The permit application will provide the Director with information about options for entrainment reductions at the site and other possible avenues for addressing any adverse effects from entrainment. The purpose of the entrainment study and other permit application materials is to assist the Director in better understanding the effect of entrainment on species in the waterbody from which cooling water is withdrawn. More specifically, the entrainment study will identify species that might be entrained, and estimate their baseline entrainment rates given current entrainment controls. Moreover, the entrainment study will include information about the aquatic ecosystem effects of entrainment of species, and any threatened and endangered species whose range of habitat includes waters where the facility's intake is located. An understanding of the potential ecosystem consequences of entrainment for species will help inform Director decisions about additional information required in the permit application, or permit requirements for any possible additional technologies and management practices. EPA will endeavor to identify high-quality examples of entrainment studies as they are completed, and post them to its Web site for this rule as a resource for study preparation.

EPA's benefits estimates were based on an extrapolation of available literature on impingement and entrainment studies; the specific Entrainment Characterization Study prepared by a facility could lead to a different estimate of impingement and entrainment for that facility relative to its share of EPA's estimate in the analysis supporting this rule and in the record.

Following the Director's review of this information, the Director must determine what BTA entrainment requirement to propose and explain in writing the basis for the draft permit. The draft permit will then be available for comment from the interested public under the Director's normal permitting process.

2. Site-Specific Consideration of Cost and Benefits

In establishing requirements under section 316(b) of the CWA, the Supreme Court in *Entergy* made clear that one factor that EPA may, but is not required, to consider is the costs and benefits associated with various control options. That is, in setting standards, EPA may consider the benefits derived from reductions in the adverse environmental impacts associated with cooling water intake structures and the costs of achieving the reductions. As previously explained, following E.O. 13563, EPA has determined that the benefits of the final rule justify its costs. In addition, EPA has explained (in Section II.C above) why consideration of quantitative and qualitative social costs and benefits may be appropriate in the site-specific determinations when establishing entrainment controls.

In the site-specific proceeding, the Director must consider, among other factors, monetized, quantified and qualitative social benefits and social costs of available entrainment controls, including ecological benefits and benefits to any threatened or endangered species. The Director may be able to reject otherwise available entrainment controls if the costs of the controls are not justified by their associated benefits (taking into account monetized, quantified, and qualitative benefits), and the other factors discussed in the final rule.

In making the site-specific entrainment BTA requirements determination, the final rule requires that the Director consider the information submitted under § 122.21(r) with the section 316(b) permit application. Further, in the case of the larger withdrawing cooling water intake structures (125 mgd AIF or greater), the rule requires submission of additional information including, studies on entrainment at the facility, the costs and feasibility of control options, and information on the benefits of entrainment controls. In evaluating benefits, the Director should not ignore benefits that cannot be monetized or quantified or consider only the impingement and entrainment reductions that can be counted. To result in appropriate decisions from society's standpoint, the assessment of benefits must take into account all benefits, including categories such as recreational, commercial, and other use benefits; benefits associated with reduced thermal discharges; reduced losses to threatened and endangered species; altered food webs; benefits accruing nonlocally due to migration of fish; nutrient cycling effects; and other nonuse benefits. Merely because it is difficult to put a price tag on those benefits does not mean that they are not valuable and should not be included at least qualitatively in any assessment. The rule does not require the Director to require a facility owner or operator to conduct or submit a willingness-to-pay survey to assess benefits. Further, the rule does not limit the Director's discretion to consider non-water quality impacts in determining whether further entrainment measures are justified. When some benefits are not monetized, the requirement to consider costs and benefits in today's rule does not mean the Director should base decisions solely on the monetized benefits and costs, ignoring the non-monetized benefits. Instead, the Director should consider the costs and what the magnitude of the non-monetized benefits would have to be in order to justify the costs.

An aggregate evaluation of benefits (even if accurate) would not account for the variations in benefits from location to location. On the basis of available information, EPA's analysis of benefits relied on extrapolating data from existing impingement and entrainment characterization studies to all facilities in the same region on a flow-weighted basis. Differences in species, life stages, and biological abundance across intake locations (even within a region) could lead to very different results for a site-specific analysis of a facility as compared to that facility's share of national costs and benefits, even if the national results are, on average, accurate. A national assessment tends to mask variations in benefits and costs from different geographical locations for different water bodies. For example:

• Some fish species at coastal facilities have biological spawning attributes that differ from those at other locations.

• The proportion of the receiving water withdrawn for cooling could also vary among sites.

• The values that communities place on their resources could vary from site to site.

• One ecological environment might experience large masses of hardier eggs and larvae subject to potential entrainment; another will have fewer but less hardy eggs and larvae susceptible to entrainment. Without

detailed study information, it's difficult to ascertain which ecological environment faces the greater adverse environmental impact from a similar cooling water intake.

The resulting differences in the value of reduced entrainment—which could be dramatic for some sites—necessarily disappear in a national aggregation of results. The Agency has decided that this masking of variation in benefits further supports EPA's decision to require consideration of the site-specific benefits of entrainment control technologies in the site-specific process to establish entrainment controls.

The Director must then explain the basis for rejecting an available technology not selected for entrainment control in light of the submissions after consideration of the three factors that supported EPA's determination not to establish a uniform national entrainment standard based on closed-cycle cooling. The Director also must base the determination about BTA controls on the number and types of organisms entrained, including Federally-listed, threatened and endangered species and designated critical habitat (e.g., prey base) as well as consideration of the site-specific social costs and benefits (monetized and nonmonetized) of the various control technologies considered for the facilities.

As noted, the Director may reject an otherwise available entrainment technology as the BTA requirement (or not require any additional BTA controls) if the social costs of the controls are not justified by the social benefits (monetized and nonmonetized). EPA decided to adopt this approach in determining site-specific entrainment controls because it is permissible under *Entergy,* under E.O. 13563, and consistent with the more than 30-year history of section 316(b) permitting decisions.

This history illustrates the role that cost/benefit considerations have played. As early as 1977, EPA in a permitting decision and a General Counsel opinion explained that, while section 316(b) does not require a formal cost-benefit analysis, the relationship of costs and benefits may be considered in 316(b) decision making. *In re Pub. Serv. Co. of N.H. (Seabrook Station, Units 1 and 2),* No. 76–7, 1977 WL 22370 (June 10, 1977), remanded on other grounds, 572 F.2d 872 (1st Cir. 1978); accord *In re Central Hudson Gas & Elec. Corp., Op. EPA Gen. Counsel,* NPDES No. 63, 1977 WL 28250, at *8 (July 29, 1977). In the more than 30 years since, EPA and State permitting authorities have considered the relationship between costs and benefits to some extent in making individual permitting decisions. See, for example, *In re Pub. Serv. Co. of N.H. (Seabrook Station, Units 1 and 2),* No. 76–7, 1978 WL 21140 (E.P.A. Aug. 4, 1978), aff'd, *Seacoast Anti-Pollution League* v. *Costle,* 597 F.3d 306, 311 (1st Cir. 1979).

Because E.O. 13563 directs agencies to propose and adopt rules only upon a reasoned determination that the benefits justify the costs, EPA is allowing this consideration to be applied at the permit level. This approach is consistent with the historical application of section 316(b) requirements and will allow for a full assessment in permit decisions of both qualitative and quantitative benefits and costs. As designed, EPA's requirement for the establishment of site-specific BTA entrainment requirements strikes an appropriate balance between environmental improvements and costs, allowing the Director to consider all the relevant factors on a site-specific basis and determine BTA on the basis of those factors.

After considering the factors relevant to a site, the Director must establish appropriate entrainment controls at those facilities. The Director must review available control technology and may reject otherwise available entrainment controls as BTA if the social costs of the controls are not justified by their social benefits (taking into account both quantified and non-quantified benefits) or if the Director concludes that there are other unacceptably adverse factors that cannot be mitigated. As designed, EPA's national BTA standard for establishing site-specific BTA entrainment requirements strikes an appropriate balance between environmental improvements and costs by selectively requiring closed-cycle cooling or other entrainment technologies at some facilities, without requiring the same technologies at all facilities.

3. Potential Cost for Site-Specific Entrainment Controls

For the proposed rule, EPA analyzed possible additional costs associated with reductions in entrainment mortality that might result from the Directors' determinations of site-specific BTA requirements. Because this process will play out over a number of years as Directors consider waterbody-specific data, local impacts, and public comment, and weigh land availability, air quality impacts, and remaining useful life, those estimates of the costs of site-specific determinations are highly speculative. EPA is not presenting specific cost estimates today for prospective entrainment requirements because we do not have in hand the robust data that will be generated for individual site-specific settings as required under the national BTA standard for entrainment. Without that refined information on a site-specific basis, EPA has no ability to predict Director decision-making and therefore, the Agency is not estimating costs associated with the ultimate entrainment requirements. Similarly and for the same reasons, EPA did not estimate costs associated with requirements at §§ 125.94(g), 125.94(c)(8) or 125.94(c)(9).

EPA estimates that the most effective technology for reducing entrainment, closed-cycle cooling, is not available to at least one quarter of all facilities because of geographic constraints, air permitting restrictions in a nonattainment area and remaining useful life of the facility. EPA has limited information on which facilities these are, despite the certainty that these availability concerns are real and significant. In addition, EPA does not have in hand the site-specific data that will be generated as a result of today's rule. If EPA had this data, it would be possible to estimate the costs and benefits ultimately associated with the Directors' site-specific determinations under the national BTA standard for entrainment. The hypothetical costs generated at proposal were reported in an attempt to signal that EPA neither expects that zero facilities would be subject to closed-cycle cooling as a result of the site-specific BTA process for entrainment, nor that all facilities at which these technologies are feasible would be subject to closed-cycle cooling requirements. Without the site-specific information, there is significant uncertainty around any estimates EPA could generate of these costs (including those reported at proposal) and benefits.

VII. Response to Major Comments on the Proposed Rule and Notices of Data Availability (NODAs)

Over 1,100 organizations and individuals submitted comments on a range of issues in the proposed rule, including over an additional 62,000 letters from individuals associated with mass letter writing campaigns. An additional nearly 250 comments were received on the two NODAs. Responses to all comments, including those summarized here, are in the Response to Comments document in the official public docket (see DCN 12–0004). To facilitate a more comprehensive response and to simplify the task of discussing EPA's rationale for promulgating the final rule, EPA is

responding to these public comments in essay form. Each topic area discussed in the comment letters has been addressed in one of the comprehensive essay responses. The major comments received and EPA's responses are summarized in this section.

A. Scope and Applicability

1. Source of Water—Impoundments

Many commenters expressed concern that the proposed rules do not adequately address the unique water bodies resulting from the many man-made reservoirs specifically designed and constructed as cooling water impoundments (referred to as cooling ponds in the proposed rule). Commenters expressed confusion regarding the applicability of the proposed regulations because impoundments have both intakes from the impoundments and intakes that supply water to the impoundment. Many requested that EPA clarify that man-made impoundments, built to supply water for power plants, do not constitute water of the United States for purposes of implementing the rule or that they should be classified as meeting the definition of closed-cycle cooling.

Response: As discussed in Section I, facilities that withdraw cooling water from impoundments that are waters of the United States and that otherwise meet the criteria for coverage (including the requirement that the facility has or will be required to obtain an NPDES permit) are subject to today's rule. Revisions to the definition of waters of the U.S. are outside the scope of this rulemaking. However, today's regulatory definition of closed-cycle recirculating systems specifies that such a system may include impoundments of waters of the U.S. where the impoundment was constructed prior to today's final rule. To meet the rule definition for closed-cycle recirculating system, this impoundment must have been lawfully created for the purpose of serving as part of the cooling water system as documented in the project purpose statement for the Clean Water Act section 404 permit obtained to construct the impoundment. In the case of an impoundment whose construction pre-dates the CWA requirement to obtain a section 404 permit, EPA expects documentation of the project's purpose to be demonstrated to the satisfaction of the Director. This documentation could be some other license or permit obtained to lawfully construct the impoundment for the purposes of a cooling water system, or other such evidence as the Director finds necessary.

The definition of closed-cycle recirculating system at § 125.92(c)(1) of today's rule also specifies that impoundments that are not waters of the United States but withdraw make-up water from waters of the U.S. meet the definition of a closed-cycle recirculating system, if make-up withdrawals have been minimized. These impoundments are constructed in uplands, and are not required to obtain a 404 permit. Thus, these impoundments do not need to provide documentation of the project's purpose.

2. New Units

In the proposal, EPA defined new units as newly built units added to increase capacity at the facility. The definition did not include any rebuilt, repowered or replacement unit, including any units where the generation capacity of the new unit is equal to or greater than the unit it replaces. Many industry stakeholders agreed that the definition of new units should not include repowered existing units. Others thought that new units should be treated similarly to existing units with entrainment standards applied on a site-specific basis and that the nine proposed factors should also be applied to entrainment decisions for new units. Environmental organizations argued that EPA should set a deadline by which all existing facilities must comply with the new unit standards and that EPA's exclusion of repowered/rebuilt facilities created a loophole through which existing facilities could perpetually operate as an existing unit, even after replacing all of the generating equipment. Many of the comments had several elements in common:

- Requirements should be flexible enough to address sites where meeting the requirements is not technically feasible (e.g., limited land availability).
- EPA needs to provide greater clarity regarding how new unit standards apply to manufacturing facilities.
- The DIF is a more appropriate parameter for determining compliance because AIF cannot be determined until after the system is built, and baseline AIF would require assumptions about as-yet undetermined operational factors.
- It is unclear how the new unit requirements will be applied to manufacturing units, and the requirements do not appear to consider the circumstance where a new unit is constructed at an existing manufacturing facility where construction of the new unit does not require any modifications to the existing intake structure.
- Some commenters have noted that the new unit provisions are a departure from previous determinations and are unclear. They argue that they have not had adequate opportunity to comment on this issue and request EPA re-propose new unit requirements if it wants to continue with this initiative.

Response: EPA's definition of a ''new unit'' for the final rule can be found at § 125.92(u). New units includes the addition of a stand-alone unit that is constructed at an existing facility. The rule definition makes it clear that the new unit may be for the same general industrial activity as the existing facility. Because the requirements are much like the Phase I requirements for new facilities the costs for installing controls at new units are similar to the costs imposed on new facilities. The cooling water withdraws made by the rest of the existing facility are subject to the requirements at 40 CFR 125.94(c) and (d).

With respect to impingement mortality and entrainment, the final rule requires, at § 125.94(e)(1), that new units achieve flows commensurate with that of a closed-cycle recirculating system. As with the new facility Phase I rule, the new unit may choose to meet an alternative requirement at 40 CFR 125.94(e)(2) and demonstrate to the Director that the technologies and operational measures employed will reduce the level of adverse environmental impact from any cooling water intake structure used to supply cooling water to the new unit to a comparable level to that which would be achieved upon implementing closed-cycle recirculating for that new unit. This includes a demonstration showing that the entrainment reduction is equivalent to 90 percent or greater of the reduction that could be achieved through implementing a closed-cycle recirculating system. This demonstration must also include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if the facility were to implement a closed-cycle recirculating system.

Facilities may choose to install a closed-cycle recirculating system, and EPA has observed that many new units are selecting closed-cycle recirculating systems on their own, particularly for combined cycle and natural gas for reasons unrelated to 316(b) (such as water availability). In these cases, benefits related to reductions in IM&E would be expected to occur.

Finally, for new units at existing facilities, the Director may establish alternative requirements if the data specific to the facility indicate that

compliance with the requirements of paragraphs (e)(1) or (2) of § 125.94 for each new unit would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at issue, or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets. This provision is identical to that provided in the Phase I new facility rule.

B. Proposed Amendments Related to Phase I Rule

Commenters suggested that restoration be allowed in a range of situations, including where a nuisance species is a problem that will get worse with the use of cooling water intake structure technology, where affected species are not species of concern in man-made lakes, and to reduce the cost of meeting 316(b) requirements (i.e., offset losses).

Response: The Second Circuit found that EPA exceeded its authority by allowing facilities subject to CWA section 316(b) to comply with section 316(b) through restoration measures and, thus, EPA has deleted these provisions from the regulations at §§ 125.84 and 125.86 to make the rule consistent with the court decisions.

C. Environmental Impact Associated With Cooling Water Intake Structures

Many commenters expressed concern that limited scientific evidence exists that measureable aquatic population or community effects occur as a result of cooling water withdrawals and that impingement mortality and entrainment mortality requirements should not apply unless adverse environmental impacts are demonstrated. They also noted that not all environmental impacts are adverse. For example, removal of invasive species or quickly reproducing species might not be harmful.

Response: EPA disagrees. The evidence shows that the total number of aquatic organisms lost annually is in the hundreds of billions, or is 1.9 billion on an age-one equivalent basis. Additional data provided in comments shows aquatic organisms are lost through impingement and entrainment by all types of cooling water intake structures. The data demonstrates that the effects of cooling water intake structures on the aquatic environment are significant and widespread. In addition, there is documented evidence of population level effects of cooling water intakes for certain species in certain instances. See, for example, 69 FR 41587, July 9, 2004 for a discussion from the 2004 Phase II rule. Also, Bayshore, Indian River and Indian Point are discussed in the BA for the final rule.

D. EPA's Approach to BTA

1. Relationship of Costs and Benefits

Many commenters expressed concern that the proposed rule's costs significantly outweigh the benefits and that studies, technology modifications, monitoring, and reporting should not be required if costs exceed benefits.

Response: While the rule costs exceed the monetized benefits as presented, EPA has concluded that the costs do not outweigh total benefits when both monetized and nonmonetized benefits are considered. EPA notes that the monetized benefits are only a subset of all benefits. In the absence of complete estimates of nonuse benefits, EPA estimated partial nonuse benefits for the final rule using the benefits transfer approach from proposal. This approach is still a partial estimate, because the nonuse benefits transfer was based on a species that represents less than one percent of adverse environmental impacts. With respect to entrainment, the rule authorizes the Director to consider costs versus benefits on a site-specific basis. With respect to impingement mortality, the rule provides seven compliance alternatives based on a set of widely used, demonstrated, proven technologies, many of which have been in use for decades and whose efficacy is well supported in EPA's record.

2. Site-Specific Approach

Many commenters agreed with EPA's site-specific approach for entrainment mortality requirements but argued that the same approach should also be applied to impingement mortality requirements. State agencies and environment organizations are concerned that the site-specific entrainment determinations will create additional administrative burdens on already overextended permitting authorities which could exacerbate permit backlogs.

Response: EPA does not agree that impingement mortality is best addressed by the same approach adopted for entrainment. This is because EPA has been able to identify low-cost technologies that are available, feasible and demonstrated for impingement mortality nationally. EPA has not been able to identify an available, feasible and demonstrated technology nationally for entrainment, and therefore has adopted as its national BTA entrainment standard a structured process for determining on a site-specific basis what entrainment controls are the best technology available at a particular facility. EPA agrees that site-specific entrainment has potential to create additional burdens for states, but EPA has tried to limit this burden by simplifying its information collection requirements from those at proposal. EPA has streamlined the information collection requirements so that information necessary for the Director to make a BTA determination is submitted by the permittee in the permit application early in the process, thus minimizing the number of transactions between permittee and the Director.

E. BTA Performance Standards

1. Impingement Standards

EPA received a substantial number of comments on how the final rule should address impingement mortality. EPA proposed an impingement mortality standard based on the performance of modified traveling screens with fish handling and return that required achievement of a numeric IM performance standard. As an alternative EPA proposed that a facility could demonstrate that either the design intake velocity or the actual intake velocity at its operation was less than 0.5 fps. Most of the commenters, including members of the U.S. Congress, state and local elected officials, and industry stakeholders, requested additional flexibility in complying with the impingement mortality standards. While the proposal would not specifically require the use of modified traveling screens with a fish handling and return system to meet the impingement mortality standards, some commenters interpreted the proposed rule as requiring this. EPA proposed impingement mortality standards that were expressed as a monthly average and a 12-month average. EPA recognizes, however, that some regulated entities might find a technology-based compliance option, rather than a performance-based approach, more attractive. Such an approach, particularly the specification of pre-approved technologies, could offer higher regulatory certainty, easier demonstration of compliance, and might offer a less expensive alternative because of reduced monitoring requirements associated with pre-approved technologies. Some commenters viewed the proposed impingement mortality standard as overly stringent and requested that EPA establish alternative impingement mortality standards, including site-specific impingement mortality

requirements similar to those proposed for entrainment. Other commenters provided data pertaining to the performance of technologies, including modified traveling screens used as the basis for the impingement mortality performance standard. Several industry stakeholders stated that, despite EPA's best intentions, the proposed rule applied a one-size-fits-all approach for impingement mortality. While all the suggested changes to the proposal seek to provide additional flexibility through a variety of approaches, most of the comments had several elements in common:

- Defining modified traveling screens as a pre-approved technology or otherwise streamlining the NPDES process for facilities using the candidate technology on which BTA is based. Thus, EPA would designate certain technologies or certain conditions as complying with the impingement requirement.
- Providing a mechanism to identify other technologies that perform comparably to modified traveling screens.
- Modifying the proposal so that facilities that have already reduced the rate of impingement could obtain credit toward the impingement mortality standard.
- Developing a more tailored approach to protecting shellfish.
- Creating alternatives for facilities with very low (de minimis) impingement levels or mortality rates.
- Providing additional clarity on species of concern as it pertains to demonstrating compliance with the numeric impingement mortality performance standard.
- Reevaluating the impingement mortality numerical performance standards.

In addition, as noted above, EPA also received a number of comments suggesting that it adopt a site-specific approach to reducing impingement mortality similar to the proposed approach for addressing entrainment, rather than uniform national requirements for impingement mortality and a site-specific approach for entrainment only.

Many commenters expressed concern that the entrapment requirements were not well defined and would require costly technologies that are not considered in EPA's cost estimates and could be difficult to comply with, particularly where cooling systems employ impoundments or basins downstream of the initial intake structure.

Response: See the earlier discussion concerning how EPA determined the numeric impingement mortality performance standard. Additionally, see earlier discussion for an explanation of how EPA revised the impingement mortality standard to provide seven alternatives for compliance.

EPA agrees that specific entrapment requirements are not necessary and requirements for facilities to deploy technologies to avoid entrapment have been deleted from the final rule. However, a facility that entraps fish must count the entrapped organisms as impingement mortality.

2. Entrainment Standards

A substantial number of commenters supported EPA's site-specific approach for entrainment standards. Suggested revisions to the approach included the following:

- EPA should recognize the value of waterbody-based requirements, including withdrawals on lakes/reservoirs and less than 5 percent of rivers as not requiring entrainment mortality.
- Units with a low capacity utilization should be exempt from entrainment mortality.
- Facilities with AIF of less than 125 mgd should be presumed as entrainment mortality compliant.
- EPA should consider entrainment survival.

Response: With respect to waterbody-based requirements and capacity utilization thresholds, EPA disagrees with commenters suggestions. There is no fundamental difference in technological performance based on waterbody so there is no need to subcategorize based on waterbody. EPA found that low CUR facilities are generally peaking plants that operate at full capacity for portions of days during a few months or less. Further, EPA found that some sites continue to withdraw water through their cooling water intake structure even when no power is being generated. If that period of cooling water intake operation corresponds with times when spawning is occurring, those facilities could have significant impacts from impingement and entrainment. Therefore, simply being a low CUR unit does not imply no adverse environmental impacts. Instead, EPA found that low CUR should be looked at more closely on an individual unit basis. EPA has included a provision in the final rule that states where a generating unit has an annual average capacity utilization rate of less than 8 percent averaged over a 24-month block contiguous period, the owner or operator may request that the Director establish less stringent standards for IM. With respect to facilities below 125 AIF being considered entrainment compliant, EPA disagrees with the comment since any facility at any flow may have an adverse environmental impact. With regard to entrainment survival, EPA does allow for consideration of entrainment survival. The monitoring requirements for entrainment for new units at § 125.96(d)(3) states that mortality after passing the cooling water intake structure must be counted as 100 percent mortality unless you have demonstrated to the approval of the Director that the mortality for each species is less than 100 percent.

3. Closed-Cycle Cooling

Both industrial stakeholders and many state agencies endorsed an approach that deems facilities with closed-cycle cooling to be in compliance with the BTA impingement mortality standard, and eligible for reduced monitoring and reporting requirements. Most industrial stakeholders agreed with the EPA decision that closed-cycle cooling should not be imposed as a national BTA standard. They argue that although closed-cycle cooling might be available and achievable at many facilities, requiring closed-cycle cooling nationally has numerous drawbacks including the following:

- Requirements for closed-cycle flow reduction do not take into consideration the site-specific limitations at some facilities (e.g., blowdown water quality, scale, fouling problems).
- Cooling towers would result in significant adverse impacts from fine particulates, carbon dioxide emissions, evaporative water loss, and other issues.

Commenters expressed concern that the proposed definition of a closed-cycle recirculating system is far more restrictive than the definition used in the Phase I rule. It includes only systems that withdraw make-up flow intermittently, are designed to operate above minimum COC, reduce flow by a specified percentage (depending on whether salt or fresh water), and did not include impoundments that are waters of the United States. Some commenters stated that while they might have been effectively operating as closed-cycle units for many years, they have concerns with their ability to comply with the definition in the proposal, particularly with respect to the specified COC.

Response: EPA agrees that facilities employing a closed-cycle recirculating system for entrainment should also be deemed in compliance with the impingement mortality standard, as long as the system is properly operated. While a closed-cycle recirculating

system is the most effective technology for reducing entrainment, EPA has not established BTA based on closed-cycle cooling because EPA concluded it was not BTA, for the reasons specified in Section VI. Regarding the definition of closed-cycle cooling, EPA identified two parameters that demonstrate proper operation: Flow reduction and cycles of concentration. To provide flexibility, EPA has removed the numeric levels of the metrics as threshold, while retaining the minimized makeup flows aspect of the definition. Therefore while the definition in this final rule does not establish fixed requirements in terms of COC and comparable percentage flow reduction to qualify as a closed-cycle recirculating system, the rule provides that a closed-cycle recirculating system ''generally'' will achieve the specified benchmarks that characterize a properly operating closed-cycle cooling system. EPA further recognizes that certain unavoidable circumstances could exist where the specified COC or percent reduction values might not be achievable. Such site-specific circumstances could include situations where water quality-based discharge limits might limit the concentration of a pollutant that is not readily treatable in the cooling tower blowdown or situations where the source water quality could lead to unavoidable problems concerning scale formation, solids buildup, corrosion, or media fouling. If a facility can demonstrate that these occurrences are unavoidable, under the definition in the final rule, the Director may determine that such a facility is a closed-cycle recirculating system, taking into account the site-specific circumstances. In addition, EPA has explained how the conditions added to the existing facilities definition do not in effect make it more stringent than the Phase I definition of closed-cycle recirculating systems. The auxiliary electricity a facility uses to run the fans in a closed-cycle system is electricity the facility can't sell. The opportunity cost to the facility of using that electricity to run the fans is the forgone revenue they would have been able to earn if they had run their cooling water system in once-through mode. The forgone revenue provides the incentive for a facility to run its closed-cycle system in once-through mode, rather than in closed-cycle mode. Thus, EPA adjusted the definition of a closed-cycle recirculating system to be appropriate for retrofit situations.

F. Implementation

Many commenters expressed concern that the compliance timeline for impingement mortality and entrainment requirements should be synchronized to prevent a facility from having to install technology to comply with impingement mortality requirements and then later be required to install entrainment mortality technology.

Response: To address this concern, EPA revised the impingement mortality compliance requirements to provide that after issuance of a final permit establishing the entrainment requirements under § 125.94 (d), the owner or operator of an existing facility must comply with the impingement mortality standard in paragraph § 125.94(c) as soon as practicable. When the Director establishes a compliance schedule under § 125.94(d), the schedule must provide for compliance as soon as practicable. Thus, EPA has synchronized decision making about technology requirements, avoiding situations where investments in IM controls would later be rendered obsolete by entrainment control requirements.

G. Costs

1. Impingement Mortality Technology Costs

Commenters expressed concern about the approach for technology assignments used to estimate compliance with the impingement mortality standards and generally asserted that costs were underestimated. These concerns included the following:

- The EPA incorrectly assumed traveling screens were an available technology at most facilities.
- EPA underestimated the costs of modified traveling screens.
- EPA underestimated the difficulty and costs of installing fish returns.

Response: EPA disagrees that traveling screens are not an available technology at most facilities; survey data provided by industry shows that 93 percent of generators and 73 percent of manufacturers already have screens. EPA agrees that some facilities may not be able to readily upgrade their screens to modified traveling screens with fish return, but that the vast majority can.

EPA has updated the estimated costs of the rule to reflect the difficulty of installing fish return and adjusted the cost of modified traveling screens to reflect most recently available vendor data. Specifically, EPA reviewed the cost methodology and made a number of revisions including the following:

- EPA revised the technology assignment such that only those model intakes that have existing traveling screens are assigned modified traveling screen costs.
- EPA increased the estimated capital costs for modified traveling screens by 20 percent.
- EPA increased the estimated capital costs of fish returns and provided for an additional increase for facilities whose intakes would be difficult to install fish returns.

For further discussion, see Section IX and the TDD (Chapter 8).

2. Entrainment Mortality Technology Costs

Industrial stakeholder commenters argued that closed-cycle cooling costs are underestimated and the cost analysis fails to include any costs for entrainment requirements. Riverkeeper argued that the EPA closed-cycle costs are overestimated.

Response: For both the proposal and this final rule, EPA revised the methodology for estimating closed-cycle costs from what was used for Phase II and Phase III. EPA's revised methodology is based on the cost methodology provided by the Electric Power Research Institute (EPRI). EPRI based its cost methodology on over 50 actual and planned closed-cycle cooling system retrofits and EPA concluded that these cost estimates better reflect actual costs. EPRI has updated their closed-cycle cost methodology since EPA adoption of the earlier version and provided an estimate of closed-cycle costs for generators with a design flow above 50 mgd (See DCN 12–6807). A comparison between the EPRI estimates and comparable EPA estimates indicate that the EPA capital and downtime costs are somewhat lower than the EPRI estimates, while the EPA energy penalty costs are higher. (See DCN 12–6656.) While Riverkeeper cites actual costs from retrofit projects completed in 1998 and 2002 to support the argument that EPA's capital costs are overestimated, EPA has identified more recent closed-cycle retrofits where the capital costs were much higher than the EPA average, suggesting that the costs used by EPA in the final rule are representative of the range of costs that may occur nationwide. (See DCN 12–6656.) Thus EPA considers its closed-cycle costs to reasonably reflect actual costs.

EPA also received estimated costs for closed-cycle retrofits at small, medium, and large manufacturing cooling systems from the American Chemical Council (ACC). A comparison of these costs to comparable EPA estimates indicated that for larger systems the costs are mostly in agreement but that for smaller systems (e.g., 5,000 gpm), the EPA cost estimates are lower. EPA's acknowledges its methodology uses a linear approach and does not fully

account for the increased costs associated with the diseconomies of scale at the lower end of the spectrum of system sizes.

Under EPA's selected option, compliance for entrainment reduction requirements is established on a site-specific basis. Because no particular result is prescribed under this approach, it is difficult to ascribe compliance costs for this aspect of the rule without the site-specific information that will be generated as a result of the national BTA standard for entrainment decision-making established by today's rule. For Proposal Options 2 and 3 where closed-cycle cooling would be required, EPA did estimate costs for closed-cycle cooling. EPA has not estimated what site-specific determinations will be made as part of the analysis.

H. Monitoring and Reporting

1. Velocity Monitoring

Many commenters explained that it would be difficult to directly measure through-screen velocity for screen technology and agreed with the suggestion in the NODA that EPA should allow for calculation of through-screen velocity. Also, many were concerned that a velocity limit based on minimum water levels would be difficult to comply with. Of concern are extreme conditions that are beyond the facility's control (e.g., low water due to drought).

Response: EPA agrees that direct measurement of intake velocity on a traveling screen may be problematic in some circumstances, and the final rule allows intakes to comply with the low velocity IM compliance alternatives by either calculation or direct measurement. Compliance will be demonstrated through monitoring and reporting of actual or calculated intake velocities. Short-term exceedances of the velocity may be permissible for brief periods, with Director approval, for purposes of maintaining the cooling water intake system, such as backwashing the screen face. EPA expects that facilities will employ appropriate design and operational measures to ensure that the maximum velocity is not exceeded during minimum ambient source water surface elevations, as can be anticipated through best professional judgment using hydrological data.

2. Impingement Mortality Monitoring

EPA received many comments concerning impingement mortality monitoring. Issues regarding impingement monitoring included the following:

- Many commenters expressed concern that the impingement mortality standard is unclear as to what species the impingement mortality requirements apply.
- Intakes with low impingement would have difficulty calculating impingement mortality.
- Monitoring requirements for impingement mortality are excessive, especially given the physical and biological challenges of appropriate sampling.
- Monitoring requirements should be eliminated for properly installed/operated pre-approved technologies.
- Impingement ''selects'' impaired organisms, resulting in bias.

Response: EPA has addressed concerns regarding monitoring in the final rule. For example, there is no biological compliance monitoring for pre-approved and streamlined compliance alternatives in § 125.94 (c)(1) through (6) of today's rule beyond that required for the permit application, and monitoring may be greatly reduced for other facilities. EPA recognizes that biological monitoring can be expensive, which factored into EPA significantly reducing those requirements. With respect to intakes with low impingement having difficulty calculating impingement mortality, facilities can demonstrate under § 125.94(c)(6) that the rate of impingement is reduced due to intake location or other technologies or factors. Further, under § 125.94(c)(11) a facility can demonstrate to the Director that there is a *de minimis* rate of impingement such that no additional controls are warranted.

3. Reporting Requirements

Comments concerning reporting requirements included the following:

- Commenters argue that permit application deadlines are unreasonable, especially given the limited number of consultants available and that EPA overestimates the number of facilities that have completed these studies.
- Peer review requirements are overly burdensome.
- Permit application requirements are burdensome and EPA should revise the proposed rules to remove, limit, or streamline the numbers and types of data, studies, and reports required. Permit application requirements should be reduced for smaller facilities with intake flow in the 2–125 mgd range.
- The proposed rule requires the § 122.21(r) permit application materials for each permit cycle, regardless of whether the facility has been modified. After the initial assessment of BTA in the first permit cycle under the new rule, the permittee should not be required to do additional studies and submit further documentation unless there is a significant change in the facility's cooling system.

Response: EPA notes that facilities have several flexibilities to address the first point, including: (1) If a permit is issued prior to July 14, 2018, the Director can delay submission requirements until such time that the facility can complete them and (2) in permit terms subsequent to the first permit issued under today's rule, the Director can waive some or all of the studies. With respect to peer review, EPA disagrees that peer review is overly burdensome. How to undertake a peer review is widely known, generally following a well-established process. EPA notes that peer review is a normal part of Agency activities, and that commenters generally favor the application of peer review to environmental data and analyses. With respect to the burden of the permit application process and subsequent permit cycles, EPA has reduced the permit application requirements for the final rule and streamlined biological data collection to two years of data collected as part of the permit application (with the exception of the few facilities expected to comply with the impingement mortality standard under the alternative at § 125.94(c)(7)). In addition, entrainment studies are not prescribed for facilities below 125 mgd, although the Director may require the facility to provide information beyond the basic permit application information. Also, the Director can waive study requirements in permit terms subsequent to the first permit issued under today's rule.

I. Endangered Species Act

Some commenters argued that it is inappropriate to automatically treat T&E species in a special category and provide for special consideration for them under the rule. These commenters asserted that EPA has no basis for incorporating ESA requirements into the rule and addressing ESA species under the NPDES program; they argued that the ESA operates independently. Other commenters argued that EPA has an obligation under the ESA to consult with the Services if cooling water intake structures are likely to affect threatened or endangered species.

Response: EPA has addressed T&E species and critical habitat in this rule to the extent necessary to ensure that this action is consistent with both the Endangered Species Act and CWA section 316(b). Section 7 of the Endangered Species Act states that

''each Federal agency shall, in consultation with and with the assistance of [the services] insure that any action authorized, funded, or carried out by [the agency] . . . is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of [designated critical] habitat.'' Under CWA section 316(b), facilities subject to NPDES permitting that have cooling water intake structures are subject to BTA to minimize adverse environmental impacts. The final rule requires NPDES 316(b) permittees to identify all Federally-listed threatened and endangered species and/or designated critical habitat that are or may be present in the action area. The Director may reject an otherwise available technology as a basis for entrainment requirements if the Director determines there are unacceptable adverse impacts including impingement, entrainment, or other adverse effects to Federally-listed threatened or endangered species or designated critical habitat. EPA consulted with the Services under the ESA regarding this rule, and a summary of the requirements related to threatened or endangered species is discussed in Section VIII.K of this preamble.

VIII. Implementation

The following sections describe how the Agency expects the final rule requirements to be implemented. The requirements of today's final rule will be applied to facilities through NPDES permits issued by EPA or authorized States under CWA section 402. A facility may generally choose to demonstrate compliance with the final rule by demonstrating compliance for the entire facility, or by demonstrating compliance for each individual cooling water intake structure. For example, a facility with two intakes could demonstrate flow reduction commensurate with an existing closed-cycle recirculating system for the first intake, and demonstrate the intake velocity at the screen face is less than 0.5 feet per second at the second intake. Alternatively, the facility could demonstrate that each of the facility's intakes are designed with an intake velocity of less than 0.5 feet per second. For details about the scope and applicability of today's final rule, see Section I above.

Today's final rule (as described in Section IV above) establishes permit application requirements for existing facilities in §§ 122.21 and 125.95, monitoring requirements in § 125.96, and record-keeping and reporting requirements in § 125.97. All existing facilities subject to the final rule that withdraw from one or more cooling water intake structures with a facility-wide DIF of greater than 2 mgd are required to comply with the national BTA impingement mortality standard at § 125.94(c) and national BTA entrainment standard at § 125.94(d). New units at existing facilities are required to meet the national BTA impingement mortality and entrainment standards at § 125.94(e).

The final regulations also require the Director to review permit application materials submitted by each regulated facility, establish impingement mortality and entrainment requirements in accordance with this rule, and issue permits that include monitoring and record-keeping requirements (§ 125.98). The permit application requirements, monitoring, record-keeping, and reporting requirements for each of the compliance alternatives are detailed in the following sections.

A. When does the final rule become effective and how are the requirements sequenced in an orderly way?

This rule becomes effective on October 14, 2014. The requirements in this rule will then be implemented in NPDES permits as the permits are issued.

EPA has sought to address the information and studies required in the permit application associated with ongoing permitting proceedings and subsequent permitting after the first implementation of this rule in a permit. The EPA realizes that, in some cases, a facility may already be in the middle of a permit proceeding at the time of promulgation of this rule, or the Director may have already required much of the same information be submitted by the facility prior to promulgation of today's final rule. Therefore the rule includes several provisions that provide flexibility for the permit application requirements. First, in the case of any permit expiring after July 14, 2018, under § 125.95 the facility must submit permit application materials required in § 122.21(r) with its next NPDES permit renewal application. Second, in the case of any permit expiring prior to July 14, 2018, under § 125.95 a facility may request that the Director waive the submission date of the permit application requirements of § 122.21(r) based on a showing by the owner or operator of the facility that it could not develop the information for which such a waiver is requested by the time required for submission of the permit renewal application. If the Director then chose to allow a delay for the submittal of any of the information requirements of § 122.21(r), the Director would then determine the schedule for submission of any delayed requirements to be as soon as practicable. Third, in the case of permit proceedings begun prior to the effective date of today's rule, and issued prior to July 14, 2018, the Director should proceed. See §§ 125.95(a)(2) and 125.98(g). In such circumstances where permit proceedings have already begun prior to the effective date of the rule, these facilities will still need to submit the appropriate permit application materials found at § 122.21(r) permit applications during their next application. Additionally, while EPA expects that many facilities will already comply with § 125.94(c), in some cases the facility will need to choose one of the compliance alternatives for IM in their subsequent permit cycle.[83] In particular, EPA expects the facility would submit the information required in § 122.21(r), and the Director would make a determination of BTA for entrainment for that facility. Only after the Director has established site-specific BTA requirements for entrainment reduction will the facility have to select the compliance alternative on which it will rely to meet the IM requirements of today's rule. The Director may either amend the permit to include the IM requirements or include them in a subsequent permit if the Director determines the proposed controls are consistent with § 125.94(c). The Director would establish a schedule incorporating each of these sequential actions. In addition, the rule allows the Director the flexibility to grant a request for a waiver of permit application requirements in § 122.21(r)(6) in order to accommodate the circumstances described here. See §§ 122.21(r)(1)(i) and 125.95(a). Fourth, in permit applications subsequent to the first permit issued under § 125.94(a)(1) with all required information submitted under § 122.21(r), the Director may approve a request to reduce information required, if conditions at the facility and in the waterbody remain substantially unchanged since the previous application.[84] See § 125.95(c). In

[83] EPA's costs do not assume zero compliance costs for prior BTA determinations or permit proceedings; all facilities were assessed costs on the basis of technologies in place as described in Section IX.

[84] However, if conditions at the facility or in the waterbody have in fact changed substantially since the previous permit application, the Director will revisit data collection needs and possibly the BTA determination. The presence of any habitat designated as critical, or species listed as threatened or endangered after issuance of the current permit

addition to all of these flexibilities, today's final rule gives advance notice to affected facilities about permit application materials and compliance schedules.

While the final rule has both reduced and streamlined the permit application requirements, the EPA has determined that for many facilities, it may take as long as 39 months to plan, collect, and compile the data and studies required to be submitted with the permit application (see Section C below for a more detailed discussion of each application element). The rule therefore specifies that July 14, 2018 reflects the date after which all permit application requirements must be submitted as specified at § 125.95. Specific permit requirements may not need a full 39 months for completion, therefore the Director may establish a schedule for submission of the required permit application elements. For example, planning for required sampling may take 6 months, inclusive of establishing a sampling team, developing sampling protocols, and acquiring necessary equipment. Source water sampling and characterization under § 122.21(r)(4) includes two years' worth of data. Therefore, the EPA expects a minimum of 30 months will be necessary for submission of § 122.21(r)(4), assuming the facility collects new data; this timeframe could be shorter if the facility chooses to use existing biological data. Facilities choosing to comply with the IM requirements through either § 125.94(c)(5) or (c)(6) must collect at least 2 years data upon which the facility would demonstrate that the modified traveling screens or the facility's systems of technology have been optimized to minimize impingement mortality. Therefore, the EPA expects a minimum of 30 months will be necessary for submission of § 122.21(r)(6), assuming the facility collects new data. Collection of entrainment characterization data and studies should occur in parallel with IM studies and sampling. Thus, after the initial 6 month planning period, facilities that do not already have recent entrainment characterization data will collect a minimum of 2 years entrainment data under § 122.21(r)(9). Facilities are expected to need an additional 9 months to assemble the entrainment data and studies as required by § 122.21(r)(9) through (12). Therefore, the EPA has concluded that as many as 39 months will be necessary for final submission of all requirements under § 122.21(r). This time frame will be adequate for facilities under 125 mgd AIF; facilities over 125 mgd AIF also need to have their 122.21(r)(10) to (12) studies peer reviewed. The EPA expects 3 months will be needed for completion of peer review requirements and generation of a final report. However, many of the facilities over 125 mgd AIF were subject to the Phase II rule before it was suspended (that is, all electric generators over 125 mgd AIF are also above 50 mgd DIF), and likely need less time for up front planning and/or data collection. Therefore, the EPA has concluded that as many as 39 months will be adequate for these facilities to meet all requirements under § 122.21(r). These time frames are consistent with the timeline EPA included in the proposed rule, and also matches the 3½ years previously provided in the Phase II rule for data collection and studies. EPA notes the submission of the studies required with the permit application should not be confused with the schedule for compliance with the BTA requirements, as discussed below.

EPA has also sought to sequence the impingement mortality controls so that a facility may select and implement these controls after the Director's determination of controls on entrainment. With respect to entrainment requirements, existing facilities withdrawing greater than 125 mgd AIF must submit permit application materials including the studies prescribed in today's final rule at § 122.21(r)(9) through (13) in order to help the Director determine what entrainment controls to require at the facility. Facilities at or below this threshold must submit any information requested by the Director. The Director will then review these materials and determine if further entrainment controls are necessary. Once the BTA requirements for entrainment have been established, the facility would finalize its chosen method for compliance with impingement mortality under § 125.94(c). It would then be appropriate for the Director to develop a schedule whereby the facility would proceed to design, construct, and implement its technologies for impingement mortality, for entrainment, or for both together should the same technology addresses both impacts. In this manner, the EPA has harmonized the schedules for meeting both impingement mortality requirements and entrainment requirements.

EPA further notes that approximately 2 percent of facilities have no controls in place for impingement or entrainment, or that a facility may choose to install modified traveling screens as part of its compliance response. In these circumstances, not only does EPA expect such decisions to be delayed until after the Director has determined the BTA requirements for entrainment, EPA acknowledges that the required optimization study of § 122.21(r)(6) cannot be completed until after the technology has been designed and constructed. EPA has provided the Director the flexibility to establish an appropriate schedule for submission of such studies under § 125.95(a)(2).

After the effective date of the regulation, when the first permit implementing the new regulatory requirements is issued, permitting authorities typically consider the need to allow facilities some period of time to come into compliance. Under today's final rule, facilities will have to comply with the impingement mortality and entrainment requirements as soon as practicable according to the schedule of requirements set by the Director. The concept of compliance schedules may be found in the generally applicable NPDES regulations at 40 CFR 122.47. Because section 316(b) has no statutory deadline for meeting the ''best available technology for minimizing adverse environmental impact'' standard, there is no statutory bar to use of a compliance schedule in appropriate circumstances. The EPA recognizes that it will take facilities time to upgrade existing technologies, and install new technologies, and that there are limits on the number of facilities that can be simultaneously offline to install control technology and still supply goods and services to orderly, functioning markets. It is appropriate for the Director to take this into account when establishing a deadline for compliance. Any such schedule would take into account factors provided in § 125.98(c), such as measures needed to maintain adequate energy reliability by an electric generating facility, or extenuating circumstances such as scheduled production outages at a manufacturing facility.

There may be overlap in the technologies used to comply with impingement mortality and entrainment standards, which could result in the facility needing more time to comply with the impingement mortality requirements. For example, if a facility plans to retrofit to wet cooling towers to reduce entrainment, the wet cooling towers technology will also comply with the impingement mortality

(whose range of habitat or designated critical habit includes waters where a facility intake is located) constitutes potential for a substantial change that must be addressed by the owner/operator in subsequent permit applications, unless the facility received an exemption pursuant to 16 U.S.C. 1536(o) or a permit pursuant to 16 U.S.C. 1539(a) or there is no reasonable expectation of take.

standard under § 125.94(c)(1). As such, the Director would schedule compliance with the impingement mortality requirements to match the schedule for entrainment requirements. Further, EPA recognizes that in some cases, especially where additional entrainment control technologies are required, the facility could require a lengthy period of time to design, construct, and implement control technologies. Therefore, the rule authorizes the Director, at § 125.94(h), to establish interim BTA requirements in a facility's schedule of requirements, for impingement mortality, entrainment, or both, where necessary on a site-specific basis.

In contrast to the proposed rule, today's final rule does not include a requirement for compliance with the impingement mortality standards within eight years. EPA expects, however, that the final rule will generally result in compliance within a similar period of time. The combination of permit issuance, the Director's determination of BTA for entrainment, and the subsequent schedule of requirements for impingement mortality will result in some facilities, particularly those already in a permitting proceeding, or with controls similar to what the new permit requires, being in compliance within a very short time frame. Some facilities that are not now in a permitting proceeding may need as much as three and a half years to fully complete their studies and data collection, and depending on the types of control selected, may need additional time to design, construct, and implement their technologies. In some cases, the Director's determination for entrainment may result in a facility meeting both the impingement mortality and entrainment BTA requirements in fewer than eight years. All facilities will be required to follow their schedule as determined by the Director.

EPA notes that there is a three-year period after the effective date of this rule before Directors will be receiving permit applications containing the full set of application requirements in § 122.21(r). EPA is aware that currently many NPDES permits for facilities with a CWIS have been administratively continued. For these administratively continued permits, the Director should consider if any permits would need additional updated information to support the permit issuance decision. The Director may, under 40 CFR 122.21(g)(13), request additional information including any permit application requirements in § 122.21(r).

B. How does the final rule reduce biological monitoring requirements?

The EPA has streamlined the biological data and study requirements for both impingement mortality and entrainment into one comprehensive set of permit application requirements and provisions. The Source Water Baseline Biological Characterization Data, impingement technology performance optimization study, Entrainment Characterization Study, and where applicable, entrainment performance studies are all conducted within the same two year time frame prior to submission of an application for a permit. Further, as shown in Exhibit VIII–1, EPA's analysis indicates that more than 99 percent of existing facilities will choose an alternative for impingement mortality that does not require continual biological compliance monitoring. Thus any required biological data consists solely of that required to be collected to meet the permit application requirements. See Section F for further discussion.

EXHIBIT VIII–1—EPA'S PROJECTIONS OF HOW FACILITIES WILL CHOOSE TO COMPLY WITH THE IM REQUIREMENTS

IM compliance alternative	Intake count [a]	Percent of total intakes
Closed-cycle recirculating system [c]	307	18
Design velocity	362	21
Actual velocity	226	13
Existing offshore velocity cap [c]	10	1
Modified traveling screens	488	29
System of technologies	278	17
Impingement Mortality Performance Standard	12	0.7
De minimis	**[b]	**[b]
Total	1,682	100

[a] EPA's compliance costs for each facility are based on the sum of the facility's intake level compliance costs. Some facilities have more than one intake. See IX.B.2 for more information on the use of the survey data.

[b] EPA has not estimated which facilities will be determined to be "de minimis" under § 125.94(c)(11) by the Director. For purposes of this analysis, EPA has assumed no facilities fall under the "de minimis" provision.

[c] EPA is not projecting facilities will install closed-cycle recirculating systems or offshore velocity caps to comply with the IM requirements, rather these facilities already have these technologies installed.

By merging the data collection and studies into the permit application requirements, EPA expects approximately half of all affected facilities will be able to complete the initial permit application within a few months.[85] In the case of a facility that was not previously required to collect data and conduct studies, it may take up to 45 months lead time for a permit to be applied for, and additional time for the permit to be issued. Although the permit application times may be longer for the first permit cycle after this rule, this is a tradeoff for the flexible IM requirements.

Once the permit is issued, EPA anticipates very few, if any, facilities will be required to conduct ongoing biological compliance monitoring related to impingement controls; for more details, see Section F and Exhibit VIII–4. Instead, for each subsequent permit cycle each facility would either (1) demonstrate to the Director that facility operations and waterbody characteristics are substantially unchanged, or (2) update any biological characterization data. Anticipating that NPDES permits are renewed when they expire, the update to the facility's biological characterization and any corresponding biological performance evaluations would be conducted approximately every five years.

[85] For example, facilities that were subject to Phase II will have already collected most of the data and information as part of the Phase II rule issued February 16, 2004 and implemented up until suspension of that rule on July 9, 2007.

C. What information will I be required to submit to the director when I apply for my NPDES permit?

Today's final rule establishes, at § 122.21(r), permit application requirements for all facilities subject to the requirements of § 125.94. Each permit application element at § 122.21(r) is described in more detail below. The final rule requires existing facilities to prepare and submit some of the same information as previously required for new facilities subject to subparts I or N (*i.e.,* Phase I new power plants and manufacturers or Phase III new offshore oil and gas facilities), namely the information at § 122.21(r)(2) through (4). In addition, the rule adds subparagraphs for existing facilities to the regulations at § 122.21(r)(4), as well as (r)(5) through (13) to include the information and study requirements specific to existing facilities.

In the case of a new unit constructed at an existing facility, EPA expects much of the information submitted by the facility in previous permit applications would still be current and relevant. Therefore, EPA has reduced the permit application requirements to those necessary to update the facility's previously submitted information under § 122.21(r)(2), (r)(3), (r)(4), (r)(5), (r)(6), (r)(7) and (r)(8). In other words, the new unit permit application is intended to describe the changes to these documents as a result of the addition of the new unit. In addition, the facility must submit information specific to the new unit's chosen compliance method at § 122.21(r)(14).

All existing facilities are required to complete and submit permit application studies to describe the source waterbody (§ 122.21(r)(2)), cooling water intake structures (§ 122.21(r)(3)), characterize the biological community in the vicinity of the cooling water intake structure (§ 122.21(r)(4)), cooling water system (§ 122.21(r)(5)), and operational status (§ 122.21(r)(8)). Facilities that already use a closed-cycle recirculating system must still submit this information in their permit application. The Director will need, for instance, the biological sampling data in § 122.21(r)(4) to serve as a record basis for their BTA determination in the permit. Furthermore, in Phase I, new facilities were required to be commensurate with closed-cycle, to meet the 0.5 fps velocity limit, and to collect two years' worth of biological data to establish a record basis for impacts at the facility. In addition, the data collected here is important to inform an owner/operator's evaluation of whether and if so what threatened or endangered species or designated critical habitat are or may be present in the action area.

All existing facilities must describe their existing impingement and entrainment technologies or operational measures and a summary of their performance, including but not limited to reductions in impingement mortality and entrainment due to intake location and reductions in total water withdrawals and usage (§ 122.21(r)(5)(iii)). All facilities must also complete and submit their chosen compliance method for impingement mortality (§ 122.21(r)(6)). This includes identification of any requests for BTA determinations under § 125.94(c)(11) *de minimis rates of impingement* or § 125.94(c)(12) *low capacity utilization power generation units.* In addition, the owner or operator of an existing facility must submit the information required under paragraph (r)(6) of § 122.21 for the alternative specified at 40 CFR 125.94(c) that the owner or operator of an existing facility chooses to rely on as its method of compliance with the BTA Standards for Impingement Mortality specified in 40 CFR 125.94. Because the IM compliance options § 125.94(c)(1), (2), and (4) include pre-approved technologies, the owner or operator of a facility choosing one of these three options to comply with the IM requirements does not have either biological studies or biological compliance monitoring related to the applicable IM standard. Compliance options § 125.94(c)(3), (5), and (6) are streamlined options. For two of these three options, the permit application element § 122.21(r)(6) further requires a site-specific study for the purposes of technology optimization to minimize impingement mortality, including additional biological data collection that in most cases would occur during the same two year period of data collection for the Source Water Baseline Biological Characterization Data required under § 122.21(r)(4) to characterize the baseline, and a demonstration that the operation of specific technologies at your facility have been optimized to minimize impingement mortality. The owner or operator of a facility choosing one of these three options to comply with the IM requirements do not have ongoing biological compliance monitoring as part of the applicable IM standard. As discussed in the previous section, the Director can establish a schedule [86] for submitting the optimization study if the facility first needs to install additional technology for IM.

All existing facilities may submit to the Director additional permit application studies to describe biological survival studies that address technology efficacy and other studies on entrainment at the facility (§ 122.21(r)(7)). This requirement does not impose any new or additional study requirements. This permit application element includes the submission of existing studies conducted by or relevant to the facility. Further, the burden of this requirement has been reduced since proposal by only referring to studies of entrainment.

All existing facilities that withdraw more than 125 mgd AIF [87] of water for cooling purposes must also submit additional information to characterize entrainment and assess the costs and benefits of installing various potential technological and operational controls. These facilities are required to submit to the Director additional permit application studies including § 122.21(r)(9), Entrainment Characterization Study; § 122.21(r)(10), Comprehensive Technical Feasibility and Cost Evaluation Study; § 122.21(r)(11), Benefits Valuation Study; and § 122.21(r)(12), Non-water Quality Environmental and Other Impacts Assessment. As with the biological data collection required of some facilities under § 122.21(r)(6), EPA expects biological data collection for the purposes of entrainment characterization to occur during the same two year period of biological data collection required under § 122.21(r)(4). EPA notes that facilities below the 125 mgd threshold are not automatically exempt from entrainment requirements. The Director may determine that entrainment studies may be required or that entrainment controls may need to be installed for any cooling water intake structure. See the Section VI of this preamble for more information.

The final rule further requires the studies at § 122.21(r)(10) through (r)(12) be subject to an external peer review as required at § 122.21(r)(13); a separate peer review is not required for § 122.21(r)(9), as it is implicitly

[86] The Director could, for example, issue a permit before the optimization study has been completed, and include a schedule for submission of the optimization study in the newly issued permit.

[87] AIF is calculated from the most recent three years' data or five years in subsequent permit cycles. As such, AIF is a variable number. It is possible that a facility could transition from below 125 mgd to above 125 mgd if the facility significantly increases withdrawal of cooling water, such as if the facility increases capacity or if it adds a new unit. In these cases, the facility will then be required to conduct the studies and meet the permit application requirements at § 122.21(r)(9)–(13). This consequence is intended to incentivize facilities to reduce or reuse water for cooling, thereby avoiding the need for additional permit application studies.

reviewed via its use in § 122.21(r)(10) and (r)(11). EPA expects the facility would first notify the Director of the peer review in advance. For example, facilities could identify their peer reviewers near the beginning of their biological data collection for the required Entrainment Characterization Study at § 122.21(r)(9). Since a facility's permit application requires two years of biological data, EPA expects this is more than enough time for the facility to identify peer reviewers, and for the Director to disapprove of a peer reviewer or require additional reviewers. Further, this provides the Director ample opportunity to confer with those agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure, including other Federal, State, and Tribal agencies. Similarly, in the case of permits for electric generating utilities, EPA expects this is enough time to confer with state co-regulators such as public utility commissions, or independent system operators whose responsibility it is to ensure reliability of the electricity grid. To minimize the overall time required to conduct a peer review, all studies conducted by the facility under § 122.21(r)(10) through (12) will be subject to peer review at the same time, in a holistic fashion. Additional guidance on conducting peer review is available on EPA's Peer Review Program Web site at *www.epa.gov/peerreview*. EPA expects the Director will use the permit application information, studies, and peer review results to assess the impingement and entrainment impacts of the cooling water intake structure and determine appropriate technological or operational controls, or both, as necessary.

While all facilities must submit § 122.21(r)(2) through (6) and (r)(8) and, where applicable (r)(7), EPA has reduced the permit application requirements based on the facility's chosen compliance method for impingement mortality. Exhibits VIII–2 and VIII–3 below illustrate the permit application requirements as they relate to an existing facility's chosen compliance methods. EPA expects permit application requirements for new units will consist of updates to previously submitted permit applications for the rest of the existing facility at which the new unit is being constructed.

For a new unit at an existing facility, EPA expects that only the appropriate and relevant updates to the existing facility's permit application materials are required (in addition to newly developed materials required at § 122.21(r)(14)). For example, the facility would update § 122.21(r)(3) to indicate the addition of the new unit, any new intakes associated with the new unit, expected operational characteristics, etc. For the owner or operator of a new unit and with an AIF greater than 125 mgd, the permit application materials under § 122.21(r)(9)–(13) are required. In those circumstances where data specific to the facility indicate that compliance with the requirements of paragraphs (e)(1) or (2) of § 125.94 for a new unit would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at issue, or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets, the rule requires the submission of such data as part of § 122.21(r)(14). EPA notes that when a new unit increases an existing facility's AIF greater than 125 mgd, the permit application requirements also include § 122.21(r)(9) through (13). Further, facilities may need several years to complete studies and data collection and, depending on the types of controls selected, may need additional time to design and construct their technology. Thus while the rule requires the permit application for a new unit at least 180 days prior to commencing cooling water withdrawals, it is in the facility's best interest to submit this data well in advance in order to prevent any delays in the Director's review of permit application materials and subsequent issuance or renewal of the facility's NPDES permit. For the owner or operator of a new unit opting to comply via § 125.94(e)(2) the application materials required under § 122.21(r)(14) must demonstrate entrainment reductions equivalent to 90 percent or greater of the reduction that could be achieved through compliance with § 125.94(e)(1).

EXHIBIT VIII–2—SUMMARY OF PERMIT APPLICATION REQUIREMENTS FOR EXISTING FACILITIES ACCORDING TO EXISTING FACILITIES' CHOSEN METHOD FOR COMPLIANCE WITH IMPINGEMENT MORTALITY STANDARD

Compliance approach to impingement	§ 122.21 subsection							
	(r)(2)	(r)(3)	(r)(4)	(r)(5)	(r)(6)	(r)(6)(i)	(r)(6)(ii)	(r)(8)
Closed-cycle recirculating system	Yes	Yes	Yes	Yes	Yes	No	No	Yes.
Design intake velocity	Yes	Yes	Yes	Yes	Yes	No	No	Yes.
Actual intake velocity	Yes	Yes	Yes	Yes	Yes	No	No	Yes.
Existing offshore velocity cap	Yes	Yes	Yes	Yes	Yes	No	No	Yes.
Modified traveling screens	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes.
Combination of technologies	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes.
Impingement Mortality Performance Standard.	Yes	Yes	Yes	Yes	Yes	Maybe	Maybe	Yes.

EXHIBIT VIII–3—SUMMARY OF PERMIT APPLICATION REQUIREMENTS FOR EXISTING FACILITIES: ENTRAINMENT

Compliance approach to entrainment	§ 122.21 subsection						
	(r)(7)	(r)(8)	(r)(9)	(r)(10)	(r)(11)	(r)(12)	(r)(13)
Closed-cycle recirculating system	Yes	Yes	Var.[a]	Var.[a]	Var.[a]	Var.[a]	Var.[a]
Director BTA entrainment determination: facility AIF above 125 mgd.	Yes	Yes	Yes	Yes	Yes	Yes	Yes.
Director BTA entrainment determination: facility AIF 125 mgd or below.	Maybe	Maybe	Maybe	Maybe	Maybe	Maybe	Maybe.

[a] Director has the discretion to waive.

In addition, the Director may set information requirements not included in today's rule to aid in best professional judgment permitting, such as will occur for entrainment at facilities below 125 mgd AIF, and for impingement and entrainment at existing facilities below 2 mgd DIF, neither of which are required by today's rule to submit items in § 122.21(r)(9) through (r)(13). The Director may find aspects of the permit application requirements to be relevant in such situations. A summary of each permit application requirement follows.[88]

1. § 122.21(r)(2) Source Water Physical Data

This requirement is unchanged from the Phase I rule and the 2004 Phase II rule. The facility is required to submit data to characterize the facility and evaluate the type of waterbody potentially affected by the cooling water intake structure. The applicant is required to submit a narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the waterbody type where each cooling water intake structure is located; identification and characterization of the source waterbody's hydrological and geomorphological features, and the methods used to conduct any physical studies to determine the intake's area of influence in the waterbody and the results of such studies; and locational maps. The Director uses this information to evaluate the appropriateness of any design or technologies proposed by the applicant.

2. § 122.21(r)(3) Cooling Water Intake Structure Data

This requirement is unchanged from the Phase I rule and the 2004 Phase II rule. This data is used to characterize the cooling water intake structure and evaluate the potential for impingement and entrainment of aquatic organisms. Information on the design of the intake structure and its location in the water column allows evaluation of which species and life stages might be subject to impingement and entrainment. A diagram of the facility's water balance is used to identify the proportion of intake water used for cooling, make-up, and process water, as well as any cooling water supplied by alternate sources, such as reuse of another facility's effluent. The water balance diagram also provides a picture of the total flow in and out of the facility, and is used to evaluate gray water, waste water, and other reuses in the facility. The applicant is required to submit a narrative description of the configuration of each of cooling water intake structure and where it is in the waterbody and in the water column; latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure; a narrative description of the operation of each of cooling water intake structure, including design intake flows, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable; a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and engineering drawings of the cooling water intake structure.

3. § 122.21(r)(4) Source Water Baseline Biological Characterization Data

This information is similar to that required in the Phase I rule. Existing facilities are required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. This supporting information must include existing data if they are available. However, the facility may supplement the data using newly conducted field studies if it chooses to do so. The information the applicant must submit includes identification of data that are not available and efforts made to identify sources of the data; a list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure; and identification of the species and life stages that would be most susceptible to impingement and entrainment. All species should be evaluated, including the forage base and those species most important in terms of significance to commercial and recreational fisheries. In addition, the applicant must identify and evaluate the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa; data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure. In addition, instead of the information required at § 122.21(r)(4)(vi), the owner or operator of an existing facility or new unit at an existing facility must identify all Federally-listed threatened and endangered species and/or designated critical habitat that are or may be present in the action area pursuant to § 125.95(f). The action area can generally be considered the area in the vicinity of impingement and entrainment at the cooling water intake structure. The applicant must also include documentation of any public participation or coordination with Federal or State agencies undertaken. If the applicant supplements the information with data collected using field studies, supporting documentation for the Source Water Baseline Biological Characterization Data must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification to the lowest taxon possible of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling or data analysis (or both) methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed in the same source waterbody. The study area should include, at a minimum, the area of influence of the cooling water intake structure. The applicant may also identify protective measures and stabilization activities that have been implemented and describe how these measures and activities affected the baseline water condition in the vicinity of the intake.

EPA is adding § 122.21(r)(4)(ix), (x) and (xi) to the Source Water Baseline Biological Characterization Data for existing facilities. Item (ix) simply defines the term ''Source Water Baseline Biological Characterization Data.'' EPA is requiring item (xi), identification of fragile species found at the facility. EPA notes that in contrast to the proposed rule, the permit application does not require submission of the proposed ''species of concern.'' EPA found that the term ''species of concern'' was too similar to terms as used in the context of T&E (threatened and endangered) species, and may cause confusion over existing Services or State requirements for such species. Further, despite EPA's efforts to distinguish between species of concern and RIS (representative indicator species) in the NODA (77 FR 34325, June 11, 2011), EPA found that many commenters were still confused by the language. Instead, EPA is adopting the term ''fragile species'' and using the term exactly as it is used with the impingement mortality data and criteria used in calculating the

[88] Where a closed-cycle recirculating system withdraws greater than 125 mgd AIF, the information required in § 122.21(r)(9) to (13) is required, unless the Director reduces or waives some or all of the information required.

impingement mortality standards of the rule. The definition for ''fragile species'' at § 125.92 is a species of fish or shellfish that has an impingement survival rate of less than 30 percent even when the BTA technology of modified traveling screens are in operation. EPA has identified fragile species in the Chapter 11 of the TDD for the final rule. Further, EPA is providing examples, in the list of 14 specific species in today's regulatory definition as a non-exclusive list. This list includes only those species specifically analyzed as part of the performance standards development. If a permit applicant can sufficiently demonstrate a record basis, the permitting Director may deem a particular species to be a fragile species for the purpose of a particular permit.

American shad (*Clupeidae*), bay anchovy (*Engraulidae*), and blueback herring (*Clupeidae*) belong to families that are specifically identified in the TDD Chapter 11 as examples of species that may be, at the Director's discretion, excluded from performance standards on the basis of impingement survival. As another example, threadfin shad (a species not specifically identified as fragile in today's rule) are prone to fall die-off when the water temperature reaches 42 degrees. The EPA does not intend for such naturally occurring mortality to be counted against a facility's performance in reducing impingement mortality. EPA is aware of limited success in flow reduction and behavioral deterrent systems in protecting fragile species. However, there are no demonstrated and available technologies for industry as a whole to address fragile species. EPA has long recognized these species as having low survival rates under the best of conditions, and established different mechanisms to address these in today's final rule. Today's BTA for impingement mortality allows the Director to establish site-specific controls under § 125.94(c)(9) to address fragile species.

EPA notes the change in terminology to ''fragile species'' eliminates the proposed rule burden on States to review and approve each facility's site-specific species of concern, and eliminates confusion over any T&E or RIS that may be subject to more stringent requirements under other Federal, State, and Tribal law. Further, use of ''fragile species'' instead of ''species of concern'' greatly increases the transparency of the Agency's impingement mortality performance standards.

In addition, EPA notes that § 122.21(r)(4)(vi) requires the applicant to submit information on all threatened and endangered species, not just those T&E species that are fish or shellfish. Examples of T&E species that are not fish or shellfish are corals, sea turtles and marine mammals.

4. § 122.21(r)(5) Cooling Water System Data

The Director uses this data in determining the appropriate standards that would be applied to the facility. Facilities are able to use this information, along with the water balance diagram required by § 122.21(r)(3), to demonstrate the extent to which flow reductions have already been achieved at the facility level. The applicant must provide the following information for each cooling water intake structure they use: A narrative description of the operation of the cooling water system and its relationship to cooling water intake structures (including the use of helper towers); the proportion of the design intake flow that is used in the system including a distribution of water used for contact cooling, non-contact cooling, and process uses; a distribution of water reuse (to include cooling water reused as process water, process water reused for cooling, and the use of gray water for cooling); description of reductions in total water withdrawals including cooling water intake flow reductions already achieved through minimized process water withdrawals; description of any cooling water that is used in a manufacturing process either before or after it is used for cooling, including other recycled process water flows; the proportion of the source waterbody withdrawn (monthly); the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable. The applicant must also submit a description of existing impingement and entrainment technologies or operational measures and a summary of their performance, including for example reductions in entrainment due to intake location and reductions in total water withdrawals and usage, and efficiencies in energy production for each producing unit that result in the use of less cooling water, including for example combined cycle and cogeneration. For example, the applicant may provide comparative density data for the intake to demonstrate the extent to which location of the intake has reduced adverse environmental impact. The additional information at § 122.21(r)(5)(iii) is specific to those process units that use cooling water for purposes other than power generation or steam, and where the owner or operator intends to comply with the BTA for IM through either the use of flow reduction measures or the reuse of other water for cooling purposes.

5. § 122.21(r)(6) Chosen Method of Compliance With Impingement Mortality Standard

Today's final rule is flexible in providing seven different compliance options for meeting impingement mortality requirements. Under § 122.21(r)(6), the facility must identify its approach to meet the impingement mortality standards. The facility must identify the compliance method for the entire facility or, alternatively, the compliance method for each cooling water intake structure at the facility. Finding it to be unnecessary because the facility will already have a set of requirements to meet based on its chosen method of compliance, EPA has eliminated the proposed requirement for a separate impingement mortality reduction plan. In addition, monitoring and studies conducted under the reduction plan is no longer required by all facilities. Instead today's final rule specifies data collection requirements only in those instances where the facility must demonstrate a particular performance outcome as described below.

Facilities choosing to comply with § 125.94(c) by operating a modified traveling screen (under § 125.94(c)(5)) must submit an impingement technology performance optimization study under § 122.21(r)(6)(i). The site-specific study must demonstrate the modified traveling screen as defined at § 125.92 has been optimized to minimize impingement mortality. The study must include a minimum of two years of biological data collection. This time frame is consistent with the requirements at paragraph (r)(4)(iv) of § 122.21 to identify primary periods of reproduction and peak abundance, as well as § 122.21(r)(4)(v) to provide data representative of the seasonal activities, both of which would require at least one year worth of data collection. EPA expects facilities will either use existing biological data already required under § 122.21(r)(4) to complete their site-specific impingement studies, modify their biological data collections under § 122.21(r)(4) to be comprehensive and inclusive, use existing performance studies, or collect supplemental data necessary to make their demonstrations. If a facility is using previously collected data or studies that are more than 10 years old, the facility must demonstrate the data is still relevant and representative of the facility. If a facility

intends to return organisms to a different waterbody from which they are withdrawn, a request for consideration of this must be made to the Director under § 122.21(r)(6).

The rule specifies sampling at least monthly during the two year data collection effort of the impingement technology performance optimization study, and requires documentation of methods used including counting of moribund organisms, latent mortality, holding times, and counting of entrapment. The Director may establish more frequent collection, as well as specify sampling methods and additional protocols to be used. If the facility intends to return fish and shellfish to a different waterbody than the source waterbody that is used to withdraw cooling water, EPA expects this would be identified as part of § 122.21(r)(6)(i). While EPA does not expect this situation occurs very frequently, the permit application information at § 122.21(r)(6)(i) along with (r)(4) would provide the Director the information needed to determine whether such a return location is appropriate.[89] If the site-specific impingement study demonstrates the modified traveling screen (as defined at § 125.92) has been optimized to minimize impingement mortality, the Director may then determine the modified traveling screen is the best technology available for impingement mortality at the site. The Director would then include permit conditions that ensure the technology will perform as demonstrated. If the Director determines that additional data is required to identify permit operating conditions, the Director has the authority to establish such requirements under § 125.95(d). Note that the EPA envisions the study will function to optimize performance, which is not the same as requiring a study merely demonstrating a specific numeric level of performance for impingement mortality has been or can be achieved. For the majority of facilities, EPA expects annual performance using modified traveling screens will exceed the Agency's calculated average annual performance standards for impingement mortality. Several examples of modified traveling screens in EPA's record show annual performance for impingement mortality that is superior to the impingement mortality performance standard (e.g., lower than 10 percent).

Similarly, facilities choosing to comply with § 125.94(c) by operating a system of technologies (under § 125.94(c)(6)) that will achieve the impingement mortality standard must submit a impingement technology performance optimization study under § 122.21(r)(6)(ii). The site-specific study must provide a description of the technologies, operational measures, or sampling approaches or any combination of them to be used to meet the BTA for impingement mortality. The study must demonstrate that the system of technologies has been optimized to minimize impingement mortality. EPA notes the ''system'' may consist of one or more technologies already in place, or may be combined with newly installed technologies. Further, the study must include a minimum of two years of biological data collection, as just described.

The EPA is aware that it is possible for a facility to reduce its rate of impingement, but the same number of impinged fish die. This has the unintended consequence of increasing the percent impingement mortality calculated by the facility. EPA does not intend for such facilities to be penalized for significant reductions in impingement rates obtained through existing technologies and practices in place. Therefore, one difference in the required study for the system of technologies compliance alternative (as compared to the study required for modified traveling screens) is an understanding that operational measures, best management practices, intake location, and other technologies do not always lend themselves to direct impingement mortality measurements or data collection. Thus the study can include flow measurements and monitoring the rate of impingement (as opposed to directly monitoring mortality) as described below.

If the facility chooses to rely on credit for reductions in the rate of impingement already achieved, the impingement technology performance optimization study must document the reductions to be used as credit. The estimated reductions in impingement must be based on a comparison of the facility to a once-through cooling system with a traveling screen located on the shoreline of the source waterbody. For example, a facility with an offshore intake, an intake canal, or an intake located immediately downstream of a dam in a cold water stream, could demonstrate the population of fish at the intake is lower in these areas, resulting in lower rates of impingement. This provision is intended to allow a facility that conducted or completed a baseline characterization under the Phase II rule to use that same information as part of their demonstration under this rule.

As discussed in Section VI, EPA has identified flow reduction as one of the best ways to reduce both impingement and entrainment. Today's final rule, as part of the system of technologies compliance option at § 125.94(c)(6), provides the owner or operator of a facility the opportunity to demonstrate flow reduction as part of meeting the IM standards. If the facility chooses flow reduction to reduce impingement, the study at § 122.21(r)(6)(ii) must include two years of intake flows measured daily. This flow information plus the data collected under § 122.21(r)(4)(iv) would be used to document how the flow reduction results in a reduced rate of impingement, as well as documenting the extent to which such reductions are seasonal or intermittent. Many pumps operate at only one speed, which doesn't allow the facility to adjust its intake flow to changing conditions. As a potential application of § 125.94(c)(6), EPA is aware of a manufacturing facility that installed multiple pumps of different sizes, and the operator only utilized those pumps that were necessary to obtain the exact amount of cooling water needed. As another example, variable speed drives offer many facilities an opportunity to reduce their intake flows by as much as 10 percent. Variable speed drives are available at all facilities, and EPA expects variable speed drives will be considered when replacing existing recirculating pumps; however, EPA also acknowledges variable speed drives may not be practical in all cases. Nevertheless, EPA expects variable speed drives will be considered by the Director when establishing entrainment requirements under today's final rule. EPA provided an example of how a facility would receive credit for existing technologies in the NODA (see 77 FR 34322, June 11, 2011). An additional sample calculation that includes flow reduction is provided later in this section.

The study must identify each of these contributing components, and requires the calculation of the impingement mortality reflecting each component of the system. The impingement technology performance optimization study must demonstrate the system of technologies has been optimized to minimize impingement mortality. In addition, the study must document the percent impingement mortality

[89] For example, the St. Lucie generating facility determined that this arrangement was not appropriate at their site; see DCN 10–6515. The Brunswick facility, has a fish return flume that goes to a tributary rather than the intake canal or the river. This arrangement places the aquatic organisms away from the intake canal and in a more gentle water environment to increase the organisms' survival; see DCN 10–6569.

reflecting optimized operation of the total system of technologies, operational measures, and best management practices at § 122.21(r)(6)(ii)(D). The Director may then determine the system of technologies is the best technology available for impingement reduction at the site. The Director would then include permit conditions that ensure the technology will perform as demonstrated.

6. § 122.21(r)(7) Entrainment Performance Studies

EPA proposed that a facility must submit all previously conducted performance studies, but has revised this provision in the final rule to include only entrainment related studies. Impingement performance studies, where relevant, are already part of the permit application at § 122.21(r)(6). This avoids imposing a requirement on all facilities to submit previous impingement studies that may be unnecessary, and eliminates a burden on the Director to review all such studies, many of which may no longer be relevant.[90] Under today's final rule, the applicant must submit a description of any biological survival studies conducted at the facility and a summary of any conclusions or results, including the following: site-specific studies addressing technology efficacy, through-facility entrainment survival (distinguished for eggs and larvae), entrainment analyses, or studies conducted at other locations including a justification as to why the data are relevant and representative of conditions at the facility. Because of changes in the waterbody over time, studies older than 10 years must include an explanation of why the data are still relevant and representative of conditions at the facility. If the data are no longer relevant and representative, the Director may reject the data. The Director uses such studies when establishing technology-based requirements for entrainment. Permit applicants are not required to conduct new studies simply to fulfill this requirement. This requirement is rather aimed at obtaining results for relevant studies that have already been conducted as part of past permit proceedings or for other purposes even if those studies were not completed or conducted entirely as planned.

[90] For example, the study may be old and no longer representative, the study may address a pilot study of a technology no longer under consideration by the facility, or the facility may have already selected one of the compliance methods for IM based on pre-approved technologies at § 125.94(c)(1), (2) or (4).

7. § 122.21(r)(8) Operational Status

The applicant must submit a description of the operational status of each unit for which a cooling water intake structure provides water for cooling, including the following: Descriptions of each individual unit's operating status including age of the unit, capacity utilization for the previous five years (including any unusual or extended outages that significantly affect the facility's reporting of flow, impingement, or other data), and any major upgrades completed in the past 15 years (e.g., boiler or condenser replacement, changes to fuel type, a new production line); a description of completed, approved, or scheduled uprates and NRC (Nuclear Regulatory Commission) relicensing status for nuclear facilities; a description of plans or schedules for decommissioning or replacement of units; and a description of current and future production schedules for manufacturing facilities. The Director will use such information in determining the BTA for entrainment as well as when establishing compliance schedules. For example, where the remaining useful plant life is considerably shorter than the useful life of an entrainment technology or where a facility has a planned retirement within the next permit cycle, this information is useful to support a determination regarding that specific entrainment technology. This information would also be used under § 125.94(c)(12) to document infrequently used power generating units that operate with a capacity utilization of less than 8 percent averaged over a 24-month block contiguous period and that the Director may therefore determine warrants IM controls less stringent than § 125.94(c)(1) through (c)(7). With respect to entrainment, the BTA for entrainment is determined by the Director for each site, and energy reliability is one factor the Director may consider when establishing entrainment controls (see § 125.98(f)(3)). EPA expects the information submitted on energy reliability will be considered by the Director when making a BTA determination for entrainment for low CUR units.

8. § 122.21(r)(9) Entrainment Characterization Study

Facilities that withdraw greater than 125 mgd AIF must develop a study that includes a minimum of two years of entrainment data collection. EPA envisions the facility would extend the data collection methods and frequency to develop the source water characterization already required by § 122.21(r)(4) to develop the Entrainment Characterization Study. The study would include complete documentation of the data collection period and frequency of entrainment characterization, and an identification of the organisms sampled to the lowest taxon possible. The data collection must be representative of the entrainment at each intake, and the study must document how the location of the intake in the waterbody and the water column are accounted for. The study must document the intake flows associated with the data collection. Consistent with the permit application requirements requiring biological data collection at § 122.21(r)(4) and (6), EPA requires at least two years of data to sufficiently characterize annual, seasonal, and diel variations in entrainment, including variations related to climate, weather, spawning, feeding, and water column migration. Also consistent with the permit application requirements at § 122.21(r)(4) and (6), facilities may use historical data that are representative of current operation of the facility and conditions at the site with documentation regarding the continued relevance of the data. The study must include analysis of the data to determine total entrainment and entrainment mortality. Documentation in the study must include the method in which latent mortality would be identified, and all methods and quality assurance/quality control procedures for sampling and data analysis would be described. The sampling and data analysis methods must be appropriate for a quantitative survey.

This information will help the Director determine the site-specific BTA for entrainment. For facilities with no entrainment technologies currently in place, this information characterizes the total potential for entrainment. The information can also be used to demonstrate that technologies and other measures already in place, or site-specific factors such as intake location or design, already reduce entrainment. For example, abundance data might demonstrate lower comparative densities that can significantly lower entrainment rates. The information could also be used by new units under § 125.94(e)(2) to demonstrate that an alternative technology or combination of technologies reduce entrainment at that site to a level commensurate with closed-cycle cooling.

9. § 122.21(r)(10) Comprehensive Technical Feasibility and Cost Evaluation Study

The owner or operator of the facility must submit an engineering study of the technical feasibility and incremental costs of candidate entrainment control technologies. The study must include an evaluation of technical feasibility of closed-cycle cooling and fine-mesh screens with a mesh size of 2 mm or smaller, reuse of water or alternate sources of cooling water, and any other entrainment reduction technologies identified by the applicant or requested by the Director. This study must include a description of all technologies and operational measures considered (which could include alternative designs of closed-cycle recirculating systems such as natural draft cooling towers, hybrid designs, compact or multi-cell arrangements, or the conversion of helper towers to a fully recirculating system); and documentation of factors that make a candidate technology impractical or infeasible for further evaluation. For example, a discussion of land availability might include an evaluation of adjacent land, and acres potentially available because of generating unit retirements, production unit retirements, other buildings and equipment retirements, ponds, coal piles, rail yards, transmission yards, and parking lots; decommissioning of existing units; repurposing of existing land uses; documentation that insufficient acres are available on-site; and evidence of the feasibility of the purchase or other acquisition of property adjacent to the facility.

For the analysis of water reuse and use of alternate sources of cooling water, the owner or operator must examine the available alternatives for reuse of effluent from within the facility or from other dischargers in the vicinity. The volume of water available need not be for the full intake flow; reuse of water could contribute to a partial reduction in flow at the facility. Additionally, if the facility were to retrofit to a closed-cycle system, the significant reduction in flow may make nearby alternative sources more feasible. This analysis should include an estimate of the cost to build any new infrastructure (e.g., piping, pump houses) and the ongoing operational costs (e.g., pump costs) for the Director's consideration.

The final rule requires that the cost information be presented as both the facility's compliance costs and the social costs, and in net present value (NPV) terms and the corresponding annual value. Social costs are the costs estimated from the viewpoint of society, rather than individual stakeholders. Social cost represents the total burden imposed on the economy; it is the sum of all opportunity costs incurred. See Chapter 8 of EPA's 2010 Guidelines for Preparing Economic Analyses (DCN 10–3258). Some adjustments to facility compliance costs to produce social costs cause them to be higher than compliance costs, while other cause social costs to be lower. Although a facility makes investment decisions by taking tax consequences into account (after-tax costs), the favorable tax treatment of investments is viewed as a transfer and not a real resource cost, thus pre-tax costs are used in social cost analysis. From society's viewpoint, costs in the future must be amortized and discounted to net present value using a social discount rate, rather than a market cost of capital as reflected in market interest rates. The Office of Management and Budget (OMB) Circular A–4 (DCN 10–3266) instructs agencies to use both 3 percent and 7 percent discount rates. Certain administrative costs are not borne by a facility, but rather by the Director, and are social costs. Compliance costs include the facility's administrative costs, including costs of permit application, while the social cost adjustment includes the Director's administrative costs. EPA has estimated the Directors' administrative costs in the ICR for the final rule, and describes the methodology for estimating these costs in detail in the EA. Facilities may adopt a similar approach to including Director's administrative costs in their social cost estimates. In addition, this component is not expected to be large or to vary significantly across technology options considered.

From a facility's viewpoint, downtime costs include lost net revenue, while from society's viewpoint, if another facility is dispatched or inventory of manufactured goods can be sold, the only social cost of downtime is any increase in marginal costs of production at other facilities dispatched or the cost of holding inventory. Unless a facility can demonstrate that its costs of compliance will result in lower overall supply in the markets in which its products are sold, and that the effect of the lowered supply is an increase in market price and lower quantity of product sold, the facility should not make a social cost adjustment to reflect these larger market impacts.

In addition to the required social costs, the owner or operator may choose to provide facility level compliance costs; however, such costs must be provided and discussed separately from social costs. The cost evaluation component of this study must include engineering cost estimates of all technologies considered above and also discuss and provide documentation of any outages, downtime, energy penalties or other effects on revenue. The cost evaluation should be based on least-cost approaches to implementing each candidate technology while meeting all regulatory and operational requirements of the facility. Depreciation schedules, interest rates, further consideration of remaining useful life of the facility as discussed in § 122.21(r)(8), and any related assumptions must be identified. The owner or operator of the facility must obtain peer review of the Comprehensive Technical Feasibility and Cost Evaluation Study, as described in Section 12.

10. § 122.21(r)(11) Benefits Valuation Study

The owner or operator of the facility must submit a detailed discussion of the benefits of the candidate entrainment reduction technologies evaluated in § 122.21(r)(10) and using data in the Entrainment Characterization Study in § 122.21(r)(9). Each category of benefits should be described narratively, and when possible benefits should be quantified in physical or biological units and monetized using appropriate economic valuation methods. This includes incremental changes in the impingement mortality and entrainment of individual fish and shellfish for all exposed life stages, estimation of changes in stock and harvest levels of commercial and recreational species, and description of any monetization. This may include monetization using market values, market proxies (*e.g.,* models based on travel costs or other methodologies), benefits transfer and stated preference methods. Benefits that cannot be monetized should be quantified where feasible and discussed qualitatively where not. The study must identify increased or decreased thermal discharges, and must evaluate the potential changes in facility capacity, operations, and reliability due to relaxed permitting constraints related to thermal discharges. The study must also include discussion of recent mitigation efforts already completed and how these have affected fish abundance and ecosystem viability in the intake structure's area of influence. Finally, the study must identify other benefits to the environment and the community, including improvements for mammals, birds, and other organisms and aquatic habitats. The owner or operator of the facility must obtain peer review of the benefits evaluation study, as described in Section 12. EPA expects peer

reviewers to have appropriate qualifications (*e.g.,* fisheries biologist, economist) for the subject matter. The Director may consult with EPA and Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s) to determine which peer review comments must be addressed by the final study. The dollar values in the social benefits analysis should be based on the principle of willingness-to-pay (WTP), which captures monetary benefits by measuring what individuals are willing to forgo in order to enjoy a particular benefit. While the Director must consider benefit and cost information, the Director will also determine if this information is of sufficient rigor to make a decision on entrainment controls on the basis of this information. For instance, the Director may decide not to rely on benefit-cost information in establishing the entrainment controls when the benefits analysis includes only a qualitative discussion of nonuse benefits. Willingness-to-pay for nonuse benefits can be measured using benefits transfer or a stated preference survey. However, the rule does not require the Director to require a facility owner or operator to conduct or submit a stated preference survey to assess benefits.

11. § 122.21(r)(12) Non-Water Quality Environmental and Other Impacts Assessment

The owner or operator of the facility must submit a detailed discussion of the changes in non-water quality environmental and other factors attributed to technologies or operational measures, or both, considered. These changes may include, for example, increases or decreases in the following: Energy consumption; air pollutant emissions and their health and environmental impacts; noise; safety concerns, such as the potential for plumes, icing, and availability of emergency cooling water; grid reliability, including an estimate of changes to facility capacity, operations, and reliability due to cooling water availability; consumptive water use (including effects of surface water evaporation of thermal discharges); and facility reliability, such as production of steam and impacts to production based on process unit heating or cooling. The owner or operator of the facility must provide for peer review of the Non-Water Quality Environmental and Other Impacts Assessment as described in the following section.

12. § 122.21(r)(13) Peer Review

The owner or operator of the facility must provide for peer review of the permit application studies required at § 122.21(r)(10) Comprehensive Technical Feasibility and Cost Evaluation Study, § 122.21(r)(11) Benefits Valuation Study, and § 122.21(r)(12) Non-Water Quality and Other Impacts Assessment. While facilities that withdraw more than 125 mgd AIF must conduct these studies and therefore must provide for peer review, facilities that withdraw equal to or less than 125 mgd AIF may have study requirements including peer review as determined by the Director. In today's final rule, EPA did not adopt separate peer review requirements for the Entrainment Characterization Study at § 122.21(r)(9), because this data would be included in the Comprehensive Technical Feasibility and Cost Evaluation Study, Benefits Valuation Study, and Non-Water Quality and Other Impacts Assessment, and these studies are already subject to peer review. For these reasons, EPA reduced the burden in the final rule by eliminating the peer review requirement for entrainment characterization.

EPA recognized at proposal that in many cases it is more efficient for permit applicants to combine the required studies into one document and have them reviewed holistically by a single set of peer reviewers. Such an approach is allowed by the final rule, as long as the peer review panel has the background appropriate to conduct a complete and combined review and the Director approves.

The Director may consult with Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Further, the Director may require the owner or operator of the facility to include additional peer reviewers of the studies. EPA expects peer reviewers to have appropriate qualifications (e.g., in the fields of biology, engineering) for the subject matter. An explanation for any significant reviewer comments not accepted must be included in the final study submission. Additional guidance on conducting peer review is available on EPA's Peer Review Program Web site at *www.epa.gov/peerreview.*

13. § 122.21(r)(14) New Units

New units at existing facilities must identify the compliance method for the new unit under the permit application requirements at § 122.21(r)(14). Where the facility complies with BTA standards for entrainment at § 125.94(e)(1) by reducing its intake flows commensurate with that of a closed-cycle recirculating system (as defined at § 125.92(c)(1)), the BTA standards for impingement mortality will have been met by § 125.94(c)(1). To comply with the alternative at § 125.94(e)(2), there must be a demonstration that entrainment reductions equivalent to 90 percent or greater of the reductions that could be achieved through compliance with § 125.94(e)(1).[91] In this case, permit application requirement § 122.21(r)(14) requires this demonstration to include the Entrainment Characterization Study at § 122.21(r)(9). The Director may determine additional data and information, including data collection, is necessary to make the demonstration.

D. When are permit application studies due?

The owner or operator of a facility applying for reissuance of a permit must submit the information required at § 122.21(r) to the Director no later than 180 days before the current permit expires. Those facilities that were subject to the section 316(b) Phase II rule from February 16, 2004 until suspension of that rule on July 9, 2007 were already collecting some information required at § 122.21(r). EPA has structured this rule to take advantage of those data and expects facilities to use them when they satisfy requirements for permit applications.

In some cases, required permit application information might have been collected, but reports might not have been generated or finalized prior to the rule suspension in 2007. Further, facilities not subject to the Phase II rule (e.g., existing power plants below 50 mgd DIF and all existing manufacturers) might not have collected this information or might not have collected information to identify permit operating

[91] Note that a new unit may construct a new intake structure or utilize capacity from an existing intake structure. For the former, the requirements of § 125.94(e)(1) are simple to conceptualize and apply. But for the latter, EPA clarifies that the new unit requirements only apply to that portion of the flow that is serving the new unit. For a new unit using an existing intake structure that chooses to comply using § 125.94(e)(1), demonstrating that the new unit achieves the required reduction in flow should be a relatively simple exercise in identifying intake flows and the distribution of cooling water from the intake structure. For a new unit using an existing intake structure that chooses to comply using § 125.94(e)(2), the facility would demonstrate that it has reduced entrainment for that portion of the intake flow serving the new unit by 90 percent; the facility would not be required to reduce entrainment for the flow of the entire intake structure by 90 percent, unless the Director makes such a site-specific determination for entrainment at the existing units as well.

conditions. In those cases, facilities would have to collect additional data in order to have two years of biological data collection. EPA expects associated studies and reports will take several additional months to complete. For this reason, EPA has established a provision for permit application submittal for a permit expiring prior to July 14, 2018, allowing the Director flexibility to delay application requirements based on a showing by the owner or operator that it could not develop the information by the time required for submission of the permit application. The Director would then establish a schedule for submission of the delayed permit application requirements. EPA notes that the Director has the discretion to require additional studies, data collection, or an on-site inspection as part of the permit process.

Facilities whose permit expires after July 14, 2018 would submit all required materials in § 122.21(r) with their permit renewal application.

New units at existing facilities must submit the information required at § 122.21(r) to the Director no later than 180 days before commencing operation of the new unit. Because these units are being constructed at a facility that is already operating, the facility will have already submitted many of the permit application materials. The addition of a new unit would require an update of or supplement to permit application materials that have already been submitted. New units take significant time and resources to plan, design, and construct; therefore the final rule does not have a provision to waive permit application requirements based on a showing by the owner or operator that it could not develop the information by the time required for submission of the permit application. For permit renewals subsequent to the first permit issued under today's rule, the new unit would be included in the assessment of the entire facility and would no longer require unique permit application submissions. As discussed previously, the owner or operator is encouraged to submit applications well in advance of the 180 day requirement to avoid delay.

EPA is aware that some intake structures withdraw from a manmade lake or reservoir that is stocked and managed by a State or Federal natural resources agency. In some cases, the biological characterization of the source water is heavily influenced by the actions of the natural resources agency. Further, the results of biological data collection and studies may be confounded by such actions. Today's final rule at § 125.95(a)(3) gives the Director discretion to waive some or all of the permit application requirements of § 122.21(r) in such circumstances.

In permit terms subsequent to the first permit issued under the final rule, the facility will re-submit the § 122.21(r) permit application studies, while the rule still includes two years of biological data collection for some facilities. In this manner, the biological characterization over time would be routinely evaluated, i.e., every 5 years under a standard permit cycle. To reduce the burden of such data collection, however, the final rule provides that the owner or operator of a facility may submit a request to the Director to reduce the information required. See 40 CFR 125.95(c). In most cases, EPA anticipates the facility would make any such request prior to conducting its two years of biological data collection. Therefore the request for reduced information requirements must be submitted to the Director at least two years and six months before the expiration of the facility's NPDES permit. The Director may approve such a request if conditions at the facility and in the waterbody remain substantially unchanged since the previous permit application.[92] EPA expects the Director would assess the relevant previously submitted information and determine whether it remains representative of current source water, intake structure, cooling water system, and operating conditions. Accordingly, the Director may accept or reject any part of the request.

E. How will the director determine the best technology available for minimizing adverse environmental impacts?

1. Review and Approval of Permit Application Materials

Under today's rule, the Director will review all materials submitted by an existing facility with its permit application to determine appropriate NPDES permit conditions and requirements to minimize impingement mortality and entrainment. As stated at 40 CFR 125.98(a), the Director shall not issue a permit before receiving a permit application form and any supplemental information which are completed to his or her satisfaction (see existing Permit Application and Special NPDES Program Requirements at 40 CFR 122.21(e)).

Facilities with a design intake flow at or below 2 mgd will continue to have permit conditions set on a case-by-case, best professional judgment basis under 40 CFR 125.90(b) and 401.14. For such facilities, however, the Director may choose to apply some portions of the permit application conditions in today's rule to aid in the BPJ determination.

The Director is encouraged to expeditiously provide any comments on submitted materials so the facility can make responsive modifications to its information gathering activities. For permit applications subsequent to the first permit issued under today's rule, the Director could indicate whether reduced or different information must be submitted with the permit application. More specific responsibilities are described below:

a. If the Director has made a BTA determination for entrainment before the effective date of the rule, and substantially the same information was already submitted and considered by the Director in making that determination, under § 125.98(g) the Director may proceed with the Determination of BTA without requiring the owner to submit the information required in § 122.21(r).

To clarify further, EPA has included a ''transition'' provision at § 125.98(g) of today's rule that makes it clear that for any facility that has submitted a permit application before the effective date of the regulation, the Director may select the best approach to development and implementation of the next permit. These provisions are intended to avoid any unnecessary delay in recently submitted permit applications or draft permits. EPA expects that facilities will continue with any data collection requirements, study requirements, and schedules in recently issued permits.

b. If the Director establishes a compliance schedule under § 125.94, the Director will establish a schedule that sets requirements as soon as practicable. In establishing the schedule, the Director is encouraged to consider the extent to which those technologies proposed to be implemented to meet the requirements of § 125.94(d) will be used, or could otherwise affect a facility's choice of technology, to meet the requirements of § 125.94(c). Impacts of thermal discharges, along with other stressors, might be a relevant consideration when assessing benefits of technologies to reduce impacts of cooling water intakes or discharges. The Director is also encouraged to consider energy reliability, transmission capacity, and

[92] The presence of any habitat designated as critical, or species listed as threatened or endangered after issuance of the current permit (whose range of habitat or designated critical habit includes waters where a facility intake is located) constitutes potential for a substantial change that must be addressed by the owner/operator in subsequent permit applications, unless the facility received an exemption pursuant to 16 U.S.C. 1536(o) or a permit pursuant to 16 U.S.C. 1539(a) or there is no reasonable expectation of take.

grid requirements when establishing a schedule for electric power generating facilities. The Director may confer with local and regional electric power agencies and state utility regulators when establishing a schedule for electric power generating facilities (see DCN 10–6860 for information on the approach taken by California). The Director may determine that extenuating circumstances (e.g., lengthy scheduled outages, future production schedules) warrant establishing a different compliance date for any manufacturing facility.

c. The Director will review the permit application materials and studies submitted under § 122.21(r) and determine which entrainment controls are appropriate. Factors that must be considered and factors that may be considered in making the determination are provided at § 125.98. The Director must issue a written explanation for the BTA determination and must make this determination, and any other information submitted by third parties, available with the permit for public review. This determination is expected to be issued as part of the permit's statement of basis under 40 CFR 124.7.

2. Role of Social Cost-Benefit Analysis in Permit Determinations

In deciding what technology to require a permittee to install to address entrainment, the Director may undertake an evaluation of social costs and benefits of implementing such requirements. This analysis will be based on the information submitted by the applicant, supplemented by any information submitted by third parties, and additional information as determined appropriate by the Director. EPA recognizes the resource limitations faced by permitting authorities and does not generally expect that the Director would develop additional information on which to base the evaluation of social benefits and costs, although the Director may opt to do so. This analysis should evaluate benefits and costs from the perspective of society as a whole, rather than costs and benefits accruing to limited parties (e.g., very local populations or the permittee, which presents a limited set of information to the Director).

It is also important to note that the stated preference survey conducted by EPA which was discussed in the June 12, 2012 Notice of Data Availability (77 FR 34927) was designed to estimate respondents' willingness to pay for changes in the health of fish populations and aquatic ecosystems and be statistically representative at large (regional and national) scales; the results were not designed to be statistically representative at the facility level for the assessment of benefits for individual site-level permitting decisions. Today's final rule does not require the Director to require a facility owner or operator to conduct or submit a stated preference survey to assess benefits. Further, the rule does not limit the Director's discretion to consider non-water quality impacts in determining whether further entrainment measures are justified.

A number of cost elements should be accounted for in assessing the social cost of entrainment technology implementation. These are summarized below.

a. Technology Installation Cost

These peer-reviewed engineering cost estimates of the physical construction of candidate entrainment technologies at the facility are required. These costs would be provided by the applicant under § 122.21(r)(10).

b. Installation Downtime Cost

Installation of closed-cycle cooling systems will often require facilities to take additional downtime beyond ordinary annual maintenance downtime. An estimate of downtime cost to the facility is required under § 122.21(r)(10). EPA expects a facility will document that portion of downtime that is incremental to any downtime the facility already incurs due to, for example, routine maintenance outages, overhauls, refueling, and periodic replacement of equipment that is at the end of its useful life. Downtime costs to the facility include the value of lost production (e.g., electricity) minus any variable cost savings, as well as any other costs to the facility associated with downtime (shutdown and startup routines, special maintenance protocols, etc.) minus any savings associated with downtime. If they are considered in the social costs analysis, downtime costs must be adjusted to reflect production made up by other facilities or firms, because these temper the real resource costs from society's viewpoint. The cost of downtime is determined on a different basis for social cost. Specifically, the cost of downtime to society is the cost incurred for other facilities and generating units to make up the electricity or manufactured goods that would have otherwise been generated by the facility minus the cost that would have otherwise been incurred by the facility incurring downtime. This difference in cost reflects the additional cost, if any, that society must pay to generate the replacement goods, and may differ substantially from the cost of downtime to the facility.

c. Energy Penalty Cost

Operation of closed-cycle cooling systems may impose an energy penalty. EPA is using energy penalty to mean only the opportunity costs associated with reduced power production due to derating (turbine backpressure). Energy penalty does not include the costs to operate pumps and fans associated with closed-cycle cooling, which are operation and maintenance costs (and covered below). Under well-established principles in benefit-cost analysis, the cost of the energy penalty to the facility is not the opportunity cost to society. Instead, the cost to society is the cost of generating the electricity, whether incurred by the regulated facility or another facility, that is no longer available for consumption because of the energy penalty. This cost may be incurred by the facility, if it can increase the energy input to, and output from, the generating unit to generate the electricity that is otherwise no longer available for consumption, or by another generating unit if the regulated unit cannot make up the electricity. In either case, the social cost of the energy penalty is the cost of generating the electricity that would otherwise be available for consumption except for the energy penalty. Again, an assessment of these costs would be determined under the § 122.21(r)(10) demonstration.

d. Operation and Maintenance Costs for the Entrainment Technology Equipment

The cost of energy to operate the entrainment technology for electric generators should appear in the operation and maintenance costs, along with other labor and materials costs. In the same way as described above, the social cost of the energy required to operate entrainment technology is the cost for generating this electricity, as it is otherwise no longer available for end-use consumption. This cost could be incurred by the regulated facility, if it has sufficient capacity to make up the loss, or by another facility, if the regulated facility is not capable of generating the electricity that is no longer available for end-use consumption.

e. Other Administrative Expenses

This includes additional permitting or reporting expenses, or both. For social costs, the estimate should include the costs to the facility and those expected to be incurred by the Director.

EPA has estimated the Directors' administrative costs in the ICR for the final rule, as explained in the EA, and

facilities may adopt a similar approach to estimating these costs at the permit level. For assessing social cost, the cost elements outlined above would typically be accounted for on a real cost basis—that is, pre-tax and without adjusting for future inflation. Costs are tallied over an appropriate time frame, which will typically be the expected useful life of the technology installation or the remaining life of the facility, if less. Costs should be calculated as both net present value and annualized values, using an appropriate social discount rate. The applicant should document the basis for the discount rate chosen, and its methodology and calculations.

f. Benefits

In assessing the benefits of entrainment technology installation, the Director would assess the value to society from the reductions in impingement mortality and entrainment that would result from installation of a closed-cycle cooling system, fine mesh screens, or other entrainment technologies. All benefits, including monetized, quantified and qualitative benefits, should be considered in this assessment. The benefits assessment would typically look at a range of potential benefit categories, including increased harvest for commercial fisheries, increased use values for recreational fisheries, and nonuse values (existence and bequest values). The latter may be difficult to quantify or monetize. If appropriate data are available from benefits transfer or conducting stated preference studies or other sources that can be applied to the site being evaluated, these should be used to monetize nonuse values. Otherwise, nonuse values should be evaluated quantitatively and/or qualitatively. Quantitative analysis, even without monetization, can be quite useful in evaluating nonuse benefits. For example, quantifying impacts to forage and threatened and endangered species, and other indirect impacts on the aquatic environment, might allow the Director to derive a much more complete understanding of benefits as compared to a qualitative narrative, even if not directly comparable to monetary costs.

Quantifying and valuing the benefit categories listed above involves significant challenges, as described in the BA. For example, assessing the productivity and value of commercial fisheries involves estimating the expected increases in commercial yield of economically valued species over time as a result of reduced impingement mortality and entrainment, and valuing these at market prices minus any incremental production costs associated with the incremental catch. Similarly, assessing recreational use benefits involves estimating the improvements in recreational fishing opportunities resulting from reduced impingement mortality and entrainment, and assigning a value to these improvements. The value assignment is based on the estimated population profile—in particular, number and proximity to affected water resources—of recreational users, the availability of alternative competing water resources for recreational usage, and the resulting estimated change in demand for use and value of the affected water resources based on reduced impingement mortality and entrainment and increased recreational fishing performance. EPA acknowledges this could be difficult to do even on a site-specific basis.

Nonuse benefits, which encompass existence and bequest values, include impacts in such areas as population resilience and support, nutrient cycling, natural species assemblages, and ecosystem health and integrity. Nonuse values include improving the survival probability of a threatened or endangered species if present in the vicinity of the facility. Benefits might also need to be assessed beyond the vicinity of the facility's intake if migratory species are affected by the intake. Residual impacts of thermal discharges might also be appropriate to consider in the social benefits calculation.

In much the same way as described for the social cost assessment, social benefits are tallied yearly over the expected performance life of the compliance technology. This tallying should account for the ''phase-in'' of benefits (e.g., benefits may build up over time as the impingement mortality and entrainment reductions affect commercial fisheries productivity). Benefits are computed on a present value basis and annualized using an appropriate discount rate as described above. The same discount rate should be used for benefits and costs. Often, it is appropriate to calculate benefits and costs using more than one discount rate. For example, for regulatory impact analysis, OMB recommends that Federal agencies use both a 3 percent and a 7 percent rate. However, comparisons between specific benefit and cost numbers should always involve values computed using the same rate.

The resulting estimates of social cost and benefits must be considered in determinations on whether to require a permittee to install entrainment technology and the specific level of entrainment technology to be installed. The Director may reject otherwise available technologies as the BTA requirements for entrainment controls if the social costs of compliance are not justified by the social benefits, or if there are other adverse impacts that cannot be mitigated that the Director deems to be unacceptable. If all technologies considered have social costs not justified by the social benefits, or have unacceptable adverse impacts that cannot be mitigated, the Director may determine that no additional control requirements are necessary beyond what the facility is already doing. The Director should document the basis for such a determination and include it in the public notice for the draft permit.

3. Streamlined Process

The process for complying with the impingement mortality standards is expected to be highly streamlined. As shown in Exhibit VIII–1, EPA expects more than 99 percent of facilities will comply by one of the six compliance options that do not require continual biological compliance monitoring (one of the three compliance alternatives based on pre-approved technologies or one of the three streamlined compliance alternatives). If a facility chooses to comply by operating a modified traveling screen, the Director will review the impingement technology performance optimization study, including the identification of species, duration and structure of the study, and any monitoring requirements.

4. De Minimus Provision

The Director may, based on a review of data submitted under § 122.21(r), conclude that the documented rate of impingement at the cooling water intake structures is so low that no additional controls are warranted. As described in section I.A.H, low flow facilities may in particular be candidates for such consideration, although the authority of the Director is not limited to low flow facilities. The Director may want to consider facility withdrawal rates in relation to the mean annual flow of the river and possible co-location with other CWISs when making a de minimis determination. Notice of this determination would be included in the draft permit made available for public comment, and the Director's response to any comment on this determination must be included in the record for the final permit. EPA considers low rates of impingement to be measured as an organism or age-one equivalent count, and not as the effect of impingement on

fish populations. The Director may require data collection to demonstrate support for a de minimis level of impingement. In addition, EPA does not expect that a de minimis exemption would apply to facilities with no technology present other than trash racks, a technology that nearly all facilities employ. In making a determination that no additional controls are warranted, the Director may wish to consider factors such as whether the waters are subject to a TMDL for an aquatic life use, the waters are not attaining a designated use, and there would be more than minor detrimental effects on threatened or endangered species or critical habitat. The Director will still establish proper operation and maintenance conditions in the permit whenever making a de minimis finding that no additional controls are warranted. EPA notes that the de minimis provision for impingement does not necessarily mean a facility has a de minimis level of entrainment. The life stages affected by impingement are different than those affected by entrainment, and low counts of impingeable life stages do not always mean the counts of entrained organism are similarly low. Since the entrainment requirements are already determined by the Director for each site, EPA concluded that specific regulatory language for de minimis entrainment was unnecessary.

5. Low Capacity Utilization Units

The Director may consider less stringent controls for intakes dedicated to low capacity utilization rate (CUR) power generating units. If an existing facility has a cooling water intake structure used exclusively for one or more existing electric generating units, each with an annual average capacity utilization rating of less than 8 percent averaged over a 24-month block contiguous period, the owner or operator may request that the Director establish BTA standards for impingement mortality for that cooling water intake structure which are less stringent than § 125.94(c)(1) to (c)(7). When determining the permit's IM requirements associated with the low CUR unit, the Director may consider, after conferring with any appropriate state co-regulators (such as public utility commissioners) and with regional transmission organizations, independent system operators or other planning authorities, the significance of the unit's operation to the overall reliability of electric power in the area.

In addition, in determining the IM requirements associated with a low CUR unit, the Director should consider any seasonal factors for affected species that might justify seasonal limits on the unit's operation, for example any increased impacts resulting from the unit's operation during spawning runs. Also, when considering the presence and potential effects to threatened and endangered species, the Director should consider whether the life stages present at the location are at risk of being impinged or entrained at the low CUR unit's cooling water intake.

In the event that the Director determines less stringent controls for intakes dedicated to low capacity utilization power generating units are appropriate, they should consider, at a minimum, the following in establishing controls:

Strategies for minimizing water withdrawal during stand by periods of operation, startup/shutdown, and on-line periods of operation;

The effectiveness of installing variable speed pump drives to reduce water withdrawals during all periods of operation, particularly during stand-by periods of operation; and

The effectiveness of installing alternative equipment (e.g. behavioral deterrents) to minimize impingement mortality.

The owner or operator would demonstrate whether they have an intake only serving one or more low capacity utilization power generating units in permit application requirements at § 122.21(r)(3) and (8). Under § 122.21(r)(6), the owner or operator would indicate a request that the Director establish alternative BTA standards that are less stringent than § 125.94(c)(1) through (7). EPA recognizes the contribution of peaking units in serving peak electricity demands, and maintaining a reliable electricity grid. However, if peaking units are in standby mode for long periods relative to periods when they are generating electricity, the result is a capacity utilization of the cooling water intake that is greater than the capacity utilization of the generator. Significant periods of standby could contribute to a greater impact on aquatic life. While the 8 percent capacity utilization is an industry standard that distinguishes those units making the greatest contribution to a smoothly functioning electricity grid, a Director may still determine that the impacts to aquatic life are significant enough to deny a request that BTA at that intake should be less stringent than § 125.94(c)(1) to (c)(7). EPA anticipates the Director will have the information necessary to determine BTA in such circumstances based on the permit application requirements, including but not limited to an identification of the number of days the cooling water system is in operation, flow on those days, and seasonal changes in the operation of the system under § 122.21(r)(5) and the biological information under § 122.21(r)(4).

As discussed previously, the Director will determine the BTA for entrainment for low CUR units on a site-specific basis. EPA expects that many of the same factors discussed above—including the significance of the unit's operation to the overall reliability of electric power in the area, the diversity of fuels available for the unit, and the impact of the costs of any potential entrainment requirements on the unit's cooling water intake structure on overall reliability of electric power in the area—will be relevant in making site-specific BTA entrainment determinations for low CUR units. The Director may consider the factors at § 125.98(f)(3) when making these determinations for low CUR units, which includes grid reliability, among other factors.

6. Monitoring

The Director will review any impingement mortality and entrainment monitoring reports submitted by the facility to ensure ongoing compliance. EPA is shifting toward an electronic discharge monitoring report system, and many of the impingement mortality and entrainment standards can be incorporated into the discharge monitoring report itself, rather than requiring a separate report. Except for facilities choosing alternatives § 125.94(c)(7), detailed biological data collection would only be included as part of the facility's permit application submission and not for compliance purposes. The Director has the discretion to request additional information, including inspection of the facility, at § 125.95(d) (*i.e.,* permit application and supporting information requirements) and § 125.96(c) (*i.e.,* additional monitoring requirements).

7. Nuclear Units

The rule includes a provision that permits the owner of a nuclear facility to demonstrate to the Director that compliance with the rule would result in a conflict with safety requirements for their facility. See § 125.94(f). EPA anticipates that this provision would be implemented as follows. Initially, the Director will draft a permit and will share the draft permit with the owner or operator of the nuclear facility. Upon reviewing the draft permit, the owner or operator will determine whether in their view a conflict with a safety requirement established by the Nuclear

Regulatory Commission, the Department of Energy or the Naval Nuclear Propulsion Program exists. If a conflict exists, the owner or operator should communicate the conflict to the NRC, Department or Program and the Director. In all cases, whether a conflict exists or not, the Director should notify the NRC, Department or Program and the owner or operator of the facility that he or she wishes to informally confer regarding the permit. Such interactions should be scheduled, conducted and documented. Where a conflict is identified, the Director would make a site-specific BTA determination.

F. What are example permit conditions and compliance monitoring for impingement mortality?

As previously discussed, the owner or operator must comply with BTA standards as soon as practicable on a schedule of requirements established by the Director. EPA did not specify dates by which the BTA standards for impingement mortality must be met because the specific method of compliance with the BTA standards for impingement mortality is tied to the determination of BTA requirements for entrainment. Further discussion of this alignment of compliance deadlines is provided in Section A. Today's final rule provides for several methods of compliance with the BTA for impingement mortality. This section discusses each of the methods for compliance, how they follow from the permit application requirements at § 122.21(r), and any minimum monitoring and reporting requirements associated with each method.

1. Closed-Cycle Recirculating System

In this method of compliance, an existing facility must operate a closed-cycle recirculating system as defined at § 125.92(c). The facility would indicate the choice to use this compliance method under § 122.21(r)(6) in its permit application. As specified in § 122.21(r)(1), the facility would need to submit § 122.21(r)(9) through (13), if it exceeds 125 mgd AIF and these requirements are not waived by the Director. The information still required at § 122.21(r)(2) to (8) is considerably less burdensome. The monitoring must be representative of normal operating conditions, and must include measuring cooling water withdrawals, make-up water, and blowdown flows. The facility must monitor actual intake flows at a minimum frequency of daily, or may monitor the representative cycles of concentration at a minimum frequency of daily. These monitoring data would be used by the Director to determine that make-up and blowdown flows have been minimized. The owner or operator would submit these data with their existing DMR or equivalent state report. Facilities complying using closed-cycle cooling are not subject to biological compliance monitoring unless otherwise specified by the Director (see § 125.96(c)).

2. 0.5 Feet per Second Through-Screen Design Velocity

In this method of compliance, the facility must operate a cooling water intake structure that has a maximum design through-screen intake velocity of 0.5 feet per second. The facility must submit information under § 122.21(r) to the Director that demonstrates that the maximum design intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh could not exceed 0.5 feet per second. The maximum velocity must be achieved under all conditions, including during minimum ambient source water surface elevations (based on BPJ using hydrological data) and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure.

EPA notes a cylindrical wedgewire screen, in general, is designed for 0.5 feet per second. In Phase II, EPA pre-approved wedgewire screens under specific operational conditions. Today's final rule simplifies the demonstration requirements for a facility employing cylindrical wedgewire screens to that of demonstrating the maximum design through-screen velocity is 0.5 feet per second. As another example, a facility may have pumping and piping constrictions that physically limit the design intake velocity to less than 0.5 feet per second. The Director may choose to establish permit conditions that address the physical limitations of the intake, such as requiring a pump be removed from service, or that only one of two (redundant) pumps may operate at any time. Facilities choosing to comply under this section do not have monitoring requirements under this section.

3. 0.5 Feet per Second Through-Screen Actual Velocity

This method of compliance is similar to the design velocity alternative discussed above, except that the intake's maximum design velocity can exceed 0.5 fps, as long as the intake is operated such that the actual, measured velocity does not. As an example, a facility may have originally been constructed with a maximum design intake of 1.0 feet per second, but now, because it has retired generating capacity but not pumps, may only withdraw cooling water such that the actual intake velocity at the intake never exceeds 0.5 feet per second. This would constitute compliance with the impingement mortality standard. The maximum velocity must be achieved under all conditions, including during minimum ambient source water surface elevations (based on BPJ using hydrological data) and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure.

Monitoring the velocity at the screen face or immediately adjacent to the screen face must be conducted at a minimum frequency of daily. Monitoring of the approach velocity does not meet this requirement. However, in lieu of velocity monitoring at the screen face, the owner or operator may calculate the through-screen velocity using intake water flow, water depth, and the screen open area. EPA is requiring this point of measurement to ensure that fish are actually able to swim away (not into an embayment from which they cannot escape) from the location within the intake structure at which they are most susceptible to being impinged.

Under today's final rule, the Director may authorize the facility to exceed the low velocity compliance alternative for brief periods for the purpose of maintaining the cooling water intake system, such as backwashing the screen face. In this compliance option, facilities are not subject to biological compliance monitoring unless otherwise specified by the Director (see § 125.96(c)).

4. Existing Offshore Velocity Cap

In this method of compliance, facilities will submit information under § 122.21(r) that they operate an offshore velocity cap that meets the definition at § 125.92(v) and that was installed prior to the effective date of this rule. The definition of offshore velocity cap includes the requirement that the velocity cap be located a minimum of 800 feet offshore. The velocity cap must include devices to exclude marine animals, such as bar screens. The velocity cap must be designed to change the direction of water withdraw from vertical to horizontal, thereby creating velocity patterns that can be sensed and trigger an avoidance response by fish and other aquatic organisms. Intake flow must be monitored at a minimum frequency of daily. This information will confirm the intended velocity patterns are created. In this compliance option, facilities are not subject to biological compliance monitoring

unless otherwise specified by the Director (see § 125.96(c)).

EPA notes that facilities choosing to construct a velocity cap at an offshore location after the effective date of this rule would use compliance options § 125.94(c)(6) (Systems of Technologies as the Site-specific BTA for Impingement Mortality) or § 125.94(c)(7) (Impingement Mortality Performance Standard).

5. Modified Traveling Screens

In this method of compliance, a facility must first operate a modified traveling screen that meets the definition at § 125.92(s). The definition identifies and requires those features of a traveling water screen that provide for an appropriate level of fish protection: collection buckets (or equivalent) to minimize turbulence to aquatic life; guard rails or barriers to prevent loss of fish from the collection system; screen panel materials such as smooth woven mesh, drilled mesh, molded mesh, or similar materials to protect fish from descaling; continuous or near-continuous rotation of screens and operation of collection equipment to recover impinged fish as soon as practical; low pressure wash or vacuum to remove collected organisms from the screens; fish handling and return with sufficient water flow to return fish directly to the source water in a manner that does not promote predation or the re-impingement of the fish, or a large vertical drop. EPA intends for this definition to generally include modified Ristroph screens (including Geiger screens, Beaudrey WIP screens, and Hydrolox screens), dual flow screens, and rotary screens.

Modified traveling screens with a fish return and handling system is the technology basis for the impingement mortality standard, therefore the EPA fully expects biological monitoring of a properly designed, built, and operated modified traveling screen would consistently be able to meet the impingement mortality performance standard. If EPA were to simply set a performance standard based on the numeric performance levels achievable by modified traveling screens, a facility would have to conduct continual biological monitoring to demonstrate compliance. A far more efficient way to demonstrate compliance would be for facilities to optimize the operation of their technologies for their site-specific conditions and identify the conditions that distinguish proper operation at their facility. The optimized operation of the technology would be largely demonstrated through the biological data collection and studies required in the permit application at § 122.21(r)(4) and (6)(i), including an *impingement technology performance optimization study.* Biological data collection should follow the sampling protocols described in section7 below.

The optimized operation documented by the *impingement technology performance optimization study* will result in more than just meeting the impingement mortality standard, and results in a facility achieving the best possible performance.[93] The biological data collection and analysis in the *impingement technology performance optimization study* will identify the operating conditions that result in optimized performance, such as fish sluicing spray pressures, rotation speed and frequency of the screens, angle of the fish sluicing sprays, fish return trough water flows, and fish return trough location.[94] The Director will then establish these operating conditions as permit conditions, along with an equipment inspection condition to assure proper functioning of the technology. As long as the permit conditions are met, the EPA does not expect any biological compliance monitoring will be required, unless otherwise specified by the Director, for example, for the protection of shellfish or fragile species (see § 125.96(c)). Note that EPA does not intend for facilities to install closed-cycle cooling solely for the purpose of meeting the IM requirements.

6. Systems of Technologies as the BTA for Impingement Mortality

In this method of compliance, a facility must demonstrate a system of technologies is employed that will meet the impingement mortality standard. This option will allow a facility the flexibility to choose the systems approach of technologies, management practices, and operational measures it will use to demonstrate compliance, including but not limited to flow reductions, intake location, behavioral deterrents, unit closures, seasonal operations, and newly installed velocity caps. Like the compliance option for modified traveling screens, the optimized operation of the system of technologies will be largely demonstrated through the biological data collection and studies required in the permit application at § 122.21(r)(4) and (6)(ii). However, the analysis and studies for combining the performance of varied technologies is more involved.

If the system of technologies includes credit for reductions in the rate of impingement by the system, the *impingement technology performance optimization study* required at § 122.21(r)(6)(ii) will provide an estimate of those reductions including relevant supporting documentation. The estimated reductions in rate of impingement must be based on a comparison of the facility's system to a once-through cooling system with a traveling screen whose point of withdrawal from the surface water source is located at the shoreline of the source waterbody. EPA expects Phase II facilities will use information already collected as part of their *calculation baseline* (69 FR 41594, July 9, 2004). In addition, the study must include two years of biological data collection demonstrating the rate of impingement resulting from the system. For this demonstration, data collection must be conducted no less frequently than monthly. The Director may establish more frequent data collection or a longer period of study.

If the system of technologies includes credit for reductions in impingement mortality already obtained at the facility, the study must include two years of monthly biological data collection demonstrating the level of impingement mortality the optimized system achieves. Biological data collection must be representative of the impingement and the impingement mortality at the intakes and should follow the sampling protocols described in section 7 below. The *impingement technology performance optimization study* must provide a description of any sampling approach used in measuring impingement mortality, including a taxonomic identification to the lowest taxon possible of all organisms to be sampled; the method in which naturally moribund organisms are identified and taken into account; and the method in which mortality due to holding times is taken into account. In addition, the study must describe how the location of the cooling water intake structure in the waterbody and the water column are accounted for in the sampling locations. EPA requires the entrapment of organisms, as well as organisms that are carried over the screen, to be counted as impingement mortality.

If the system of technologies specifically includes flow reduction to reduce impingement, the *impingement*

[93] As demonstrated by the numerous studies included in the record for today's final rule, many facilities are able to achieve less than 10 percent impingement mortality, a performance level comparable to the impingement mortality of closed-cycle cooling. Merely requiring facilities to achieve a numerical performance standard through modified traveling screens creates disincentives to perform better.

[94] EPA also requires the entrapment of organisms, as well as organisms that are carried over the screens, to be counted as impingement mortality.

technology performance optimization study must include two years of intake flows, measured daily, as part of the demonstration, and must describe the extent to which flow reductions are seasonal or intermittent. The rule clarifies that credit for flow reductions must result from actual reductions in flow, therefore the AIF will be used as a point of comparison, and not the DIF. The study must document how the flow reduction results in reduced impingement, and how the reduction in impingement has reduced the site-specific impingement mortality. Today's final rule at § 125.98(f)(3)(iii) further clarifies that credit in reduced impingement or impingement mortality resulting from unit closures will be valid for a period of 10 years.[95] This is also reflected in permit application requirements for an owner or operator planning to retire the facility in the current permit term at 40 CFR 122.21(r)(1)(ii)(F), or in the following permit cycle at 40 CFR 122.21(r)(1)(ii)(G).

The Director must determine the system of technologies, management practices, and operational measures that is the best technology available for impingement reduction at the site. As the basis for the Director's determination, the facility must demonstrate that the system of technology has been optimized to minimize impingement mortality of all non-fragile species. In addition to the *impingement technology performance optimization study,* the Director may also use the biological source water characterization and/or the entrainment characterization studies in the permit application. EPA expects the Director's decision will be informed by comparing the impingement mortality data under § 122.21(r)(6)(ii) to the impingement mortality performance standard that would otherwise apply under § 125.94(c)(7).

In addition, the *impingement technology performance optimization study* requires documentation of the percent impingement mortality reflecting optimized operation of the total system of technologies, operational measures, and best management practices and all supporting calculations. The following example illustrates how these provisions will adjust for flow, location, and other technologies in demonstrating the IM performance for a system of technologies.

The example uses values that simplify the calculations to better illustrate the adjustments, and are not intended to reflect values that EPA expects at any facility. To simplify the example further, the facility has only fish and does not have shellfish in its source waters. EPA has chosen a hypothetical facility that examined each change in a separate study.[96] The hypothetical facility intake is located at a submerged offshore location, has an acoustical deterrent, and installed variable speed drives. For the purposes of this example, the facility has completed sampling at the forebay for two years as part of § 122.21(r)(4) and (6). During the most recent 12 months, the counts of non-fragile species totals 40,000 impinged fish. During the 24-hour holding period following each monthly sample collection, the total fish that died were counted, for a total of 12,000 dead fish for the preceding 12 months. The facility then calculated the average IM for the preceding 12 months at 30 percent as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)}}{\text{(total number of impinged fish)}} \times 100$$

$$= (12{,}000) / (40{,}000) \times 100$$
$$= 30\ \%$$

To adjust the observed percent IM for a submerged offshore location and acoustical deterrent, the facility first extracts information from its previously conducted studies related to performance and calculation baseline. Alternatively, the facility could conduct a performance study during the same two year period in which it conducts its biological data collection as part of the permit application requirements at § 122.21(r). For the submerged offshore location adjustment, fish density and flow data show the offshore location reduces the rate of impingement for all species by 4,000 fish annually. For the acoustical deterrent, performance data show a reduction in the rate of impingement of fish by 11,000 organisms annually. For purposes of this example, assume none of the 15,000 fish are assumed to contribute to further mortality; in other words, all of the fish that avoided impingement in the first place survive. Therefore, the facility has reduced impingement by 15,000 fish (*i.e.,* sum of both submerged offshore location and acoustical deterrent). The facility then takes credit for this reduction by adding the forgone impingement to the denominator of the percent IM calculations as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)}}{\text{(total number of impinged fish)}} \times 100$$

$$= (12{,}000) / (40{,}000+15{,}000) \times 100$$
$$= 22\ \%$$

[95] Because a permit may be administratively continued or may not be issued every 5 years, EPA has specified 10 years rather than two permit cycles to avoid facilities from taking credit for a unit closure that potentially occurred decades prior.

[96] EPA recognizes that facilities often examine the combined effect of two or more technologies (e.g., deterrents and offshore location) within a single study. In applying these provisions, the facility could use the outcomes associated with the combined performance of multiple technologies, but this would result in permit conditions that would also be combined.

In summary, calculating percent IM at the forebay yields a 30 percent IM, and then applying the performance for existing technologies shows the effective percent IM is actually 22 percent. Next, to adjust for the variable speed drives, the facility has determined from flow monitoring that the volume of cooling water flow has been reduced by 11 percent. In this example, assume the flow reduction does not vary considerably each month. The volume of reduced flow multiplied by the density of fish near the intake is calculated each month for 12 months, and the facility projects that the reduced flow excludes an additional 8,000 fish from impingement each year. Then the facility would apply the reduction in annual counts of impinged fish to the denominator, as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)}}{\text{(total number of impinged fish)}} \times 100$$

$$= (12{,}000) / (40{,}000+15{,}000+8{,}000) \times 100$$
$$= 19\%$$

Thus, the facility's site-specific system of technologies including optimized operation of acoustical deterrents has a total system performance of 19 percent annual impingement mortality. This example is intended to illustrate how facilities would obtain credit for existing technologies in a systems approach. While this example includes acoustical deterrents, it does not imply that acoustical deterrents are an appropriate technology for all facilities. EPA expects a facility will use the required two years' worth of monthly biological data collection and studies to conduct a similar analysis for each month. The minimum required data collection and studies will result in annual average performance calculations for 12 consecutive months. The facility will use this information as part of its demonstration to the Director.

If the Director determines the system of technologies, management practices, and operational measures is the best technology available for impingement reduction at the site, the Director will establish specific operating conditions as permit conditions, along with appropriate equipment inspection conditions to assure proper functioning of each technology. For example, a system with acoustical deterrents would likely have permit conditions related to frequency of tones, volume, location, and frequency of operation of the acoustical deterrents. The Director will also establish monitoring requirements for intake flow and velocity where such measures are an important part of the system of technologies, such as the case of variable speed drives. For example, a system that includes seasonal flow reductions would likely have permit conditions for flow monitoring. As long as the permit conditions are met, the EPA does not expect any biological compliance monitoring will be required, unless otherwise specified by the Director (see § 125.96(c)).

7. Impingement Mortality Performance Standard

In this method of compliance, facilities are required to monitor to demonstrate compliance with the impingement mortality performance standard at § 125.94(c)(7) by demonstrating a 12-month average mortality of 24 percent or less. The facility is required to monitor at a minimum frequency of monthly, unless a greater frequency is specified by the Director. For each monitoring event, the facility would determine the number of non-fragile organisms that are collected or retained on sieve with a maximum spacing of 0.56 inches (*i.e.,* that are impinged [I]), and the number that die after impingement (*i.e.,* impingement mortality [IM]). The facility must establish a post-impingement holding period of 18 to 96 hours otherwise specified by the Director. Under the definition at § 125.92(b), *all life stages of fish and shellfish* excludes specified nuisance species from the totals for both impingement and impingement mortality. Also, as defined at § 125.92(q), *latent mortality* means the delayed mortality of organisms that were initially alive upon being impinged or entrained but that do not survive the delayed effects of impingement and entrainment during an extended holding period. Delayed effects of impingement and entrainment may be due to stresses that include but are not limited to temperature change, physical stresses, and chemical stresses. The manner in which latent mortality is counted must be identified in the Entrainment Characterization Study at § 122.21(r)(9), and must also be counted in the *Impingement mortality performance standard* at § 125.94(c)(7). Fish that are included in any carryover from a traveling screen or removed from a screen as part of debris removal must be counted as impingement mortality. Fish that are entrapped by the cooling water intake system must be counted as impingement mortality.

The 12-month average of impingement mortality is calculated as the sum of total impingement mortality over 12 months divided by the sum of the total impingement over the same 12 months, as shown by the following equation:

$$\% \, IM = \left(\frac{IM}{I}\right) \times 100$$

Note that this equation would be applicable to calculating the annual average for the previous 12 months. Although facilities will be conducting biological monitoring monthly (or more frequently) and reporting that data in their discharge monitoring reports, facilities are not required to meet a monthly impingement mortality performance standard. Therefore, in this equation, *IM* is the sum of all impingement mortality over the course of the previous 12 months, and *I* is the sum of all impinged fish for the previous 12 months. If the facility's calculated annual average percentage impingement mortality is less than the 12-month average performance standard, it will be deemed to be in compliance with the 12-month average performance standard.

In establishing the monitoring requirements, EPA expects any approved monitoring protocols will

consider the entire daily and (where appropriate) tidal cycles over which data collection should occur. Typically, facilities have collected impingement samples continuously for 6 or 8 hours and repeated this cycle to cover an entire 24-hour period. Stratifying collection in this manner allows an analysis of the diel variation exhibited by many aquatic organisms, which may be important. EPA also expects the approved monitoring protocols will ensure that sampling occurs during periods of representative intake flow and not during periods of non-peak flow or scheduled outages.

The ideal point to measure impingement mortality is the location where organisms are returned to the waterbody. However, for ease of sampling and access, EPA envisions that most facilities will collect samples from the fish return system(s) at some point before the fish return discharge point. According to the studies in EPA's database, EPA envisions that facilities will either (1) divert some or all of the flow from the fish return into a fish collection and holding area, or (2) place a net or basket fitted with ⅜-inch mesh spacing in the fish return and collect and transfer the retained organisms to a holding tank. While nearly all studies in the record report the use of ⅜-inch mesh spacing, as discussed below, the final rule allows the use of other sieve and mesh spacings with a 0.56 inch maximum opening. A facility will handle the organisms in the collection device as little as possible and transfer them to a holding area with conditions as close as practicable to the source water. The facility will count the number of organisms in the holding area and subsequently hold the sample using proper technique [97] to maintain the health of the collected organisms.[98] At a period of 18 to 96 hours after the initial collection, the facility will count the number of dead organisms and determine the percentage of organisms that died in comparison to the total number of organisms measured initially. Any organisms not collected by the fish handling and return system, such as entrapped organisms, organisms in the carryover of a traveling screen, or organisms collected by a high-pressure wash and sent to debris bins, will be counted as 100 percent impingement mortality. The facility will keep records of this information and compare its result to the impingement mortality performance standard at § 125.94(c)(7).

As explained in Section VI, the impingement mortality restrictions in the final rule are based on the operation of a modified traveling screen with a fish return. Because EPA wants to ensure that a facility's monitoring plan is consistent with the technical basis for today's requirements, EPA is requiring facilities to monitor impingement mortality using a sample that has been passed through a sieve or net with no more than 0.56 inches maximum opening, so that only organisms that do not pass through this mesh size are counted.[99] In doing so, facilities would retain (and therefore count) only organisms that would have been impinged on a ⅜″ mesh screen, which was the technological basis used for developing the impingement mortality performance standard.[100] Facilities could similarly apply a ''hypothetical net'' in that they could elect to count only organisms that would not have passed through a net with mesh openings less than 0.56 inches. For example, a facility that uses a fine-mesh screen of 0.5 mm or diverts the flow directly to a sampling bay will need to count only organisms that remain if the flow passed through a net, screen, or debris basket fitted with ⅜-inch mesh spacing. EPA further expects the impingement mortality restrictions could be applied to other fish protection technologies and provides a compliance route for future technologies that are better performing.

In today's rule, EPA is including provisions for reduced biological monitoring. EPA determined that monthly monitoring at a minimum is appropriate for at least the first full permit term. In permit terms subsequent to the first permit issued under today's rule, the owner or operator may request the Director to reduce monitoring requirements under § 125.95(c). EPA expects the Director would reduce monitoring requirements as appropriate, if the facility demonstrates that its operational and biological conditions have remained the same. Given that the source waterbody may change over time (including hosting different or increased numbers of individuals or species), the biological characterization required at § 122.21(r)(4) including two years of data serves to alert interested parties as to the status of the waterbody and any changes in the biology of the waterbody. Under the compliance option (7) impingement mortality performance standard, EPA expects that as new technologies are successfully demonstrated, in subsequent permits facilities would request less frequent monitoring, or be able to incorporate such technologies in a permit application choosing a § 125.94(c)(6), system of technologies, demonstration. Once the Director has determined the technology is fully demonstrated for that site, the facility would therefore reduce their biological data collection to the minimum required by the permit application at § 122.21(r) and any monitoring the Director determines to be appropriate for verifying permit operating conditions.

8. Additional Measures

Sections § 125.94(c)(8) and (9) provide the Director discretion to require additional measures to protect shellfish and fragile species. An example of shellfish protection measures is a barrier net, including seasonal deployment of such nets. An example of additional protection measures for fragile species is an acoustical deterrent system.

9. Summary

The following Exhibit VIII–4 summarizes the monitoring requirements for impingement mortality by compliance approach alternative. The Director has the discretion to require additional monitoring under § 125.96(c) and (d). Since all permits must have requirements for visual inspections, these are not included in the exhibit.

[97] EPA recognizes that at present, there are no standard methods for conducting impingement and entrainment studies and that there can be variability in designing a sampling plan between sites. However, some elements should be incorporated into any sampling plan, as outlined in DCN 10–6708.

[98] Facilities that divert the flow directly would similarly pass the flow through a net or debris basket fitted with ⅜-inch mesh spacing or would count only organisms that would have been collected with such a basket or net.

[99] For a discussion of how EPA has changed its view of screen mesh size, see Section III of the proposed rule (76 FR 22188, April 20, 2011). EPA recognizes that smaller organisms that previously would have passed through a screen and been entrained might be ''converted'' by a fine mesh screen to an impinged organism; because organisms size would affect the rate of mortality, EPA has chosen not to rely on definitions of impingement and entrainment based on a physical process, but instead to define impingement mortality and entrainment mortality based on organisms sizes.

[100] EPA's analysis of impingement survival rates is based on data from facilities with ⅜″ mesh screens; the performance standard may be applied differently at facilities with smaller mesh size. Therefore, these standards do not provide a disincentive to facilities from using finer-meshed screens (i.e., screens with a mesh opening smaller than ⅜ inch) on their traveling screens. As long as the organisms that are large enough to have been impinged on a coarse mesh screen achieve the required survival rates, the facility will be considered to meet the impingement mortality requirements.

EXHIBIT VIII–4—SUMMARY OF MONITORING REQUIREMENTS FOR IMPINGEMENT MORTALITY

Compliance approach	Type of monitoring	Frequency
Closed-cycle recirculating system	Intake, makeup and blowdown flows (or cycles of concentration)	Daily.
Velocity (DIF)	None	None.
Velocity (AIF)	Velocity (measured or calculated from flow)	Daily.
Velocity cap	Intake flow	Daily.
Modified traveling screens	TBD [a]	TBD [a].
Systems of Technologies	TBD [b]	TBD [b].
Impingement mortality performance standard	Biological monitoring	Monthly.

[a] Monitoring requirements may vary, depending on the permit-specific operating conditions.
[b] The monitoring requirements are based on the technologies employed. For example, seasonal flow reduction would require flow monitoring.

G. What monitoring is required for entrainment?

Where the Director establishes entrainment controls, the Director is required to establish monitoring requirements. The final rule requires that the permit application studies at § 122.21(r) be submitted for each permit renewal. For facilities that withdraw 125 mgd AIF, EPA expects that the Director will use these studies, including the Source Water Baseline Biological Characterization Data at § 122.21(r)(4) and the Entrainment Characterization Study at § 122.21(r)(9), as a basis for any monitoring requirements for entrainment. To facilitate the determination of entrainment requirements for facilities below 125 mgd AIF, a Director may require the owner or operator to submit some or all of the study requirements at § 122.21(r)(9) through (13) or variations thereof. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(d), additional measures to protect Federally-listed endangered and threatened species and designated critical habitat requirements under § 125.94(g), interim standards under § 125.94(h), and any more stringent standards under § 125.94(i).

Under § 125.96(d), existing facilities with new units are required to conduct compliance monitoring to demonstrate flow reductions consistent with the requirements of § 125.94(e)(1), or equivalent impingement and entrainment reductions. The Director may establish flow monitoring or monitoring of cycles of concentration as discussed in Section F. Such measures will be used to document that the facility has minimized make-up and blowdown flows.

For facilities complying under § 125.94(e)(2), the frequency of monitoring will be determined by the Director and will vary depending on the facility's chosen method of compliance.

To meet requirements under § 125.94(e)(2), facilities must measure AIF to establish a site-specific baseline without any new technologies or employing additional operational measures. The facility must also measure the density of entrainable organisms (E_D) at a proximity to the intake that is representative of the entrainable organisms present without the cooling water intake structure. Samples will be collected over a 24-hour period to monitor each species as required by the Director. Samples will be collected no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization Data required under § 122.21(r)(4). Samples will be representative of the cooling water intake when the structure is in operation. In addition, sufficient samples must be collected to allow for calculation of 12-month average entrainment levels. The sampling will measure the total count of entrainable organisms or density of organisms, unless the Director approves of a different metric for such measurements. If the abundance varies seasonally, the Director may require several measurements of entrainment through the year, from which a 12-month average can be calculated.

For the purpose of today's rule, *entrainable* is defined as any organism that passes through a sieve with a maximum opening of 0.56 inches. As discussed in Section VI, this would avoid any confusion as to which organisms are subject to which standards (i.e., requirements for IM or requirements for E). The regulation specifies that the sieve used for calculating impingement must be the same sieve used for calculating entrainment, so all organisms are accounted for. Facilities can also monitor the latent entrainment mortality in front of the intake structure. Entrainable organisms passing through the cooling water intake structure are to be counted as 100 percent entrainment mortality unless the facility demonstrates to the approval of the Director that the mortality for each species is less than 100 percent.

In addition, facilities must monitor the AIF for each intake. The AIF must be measured at the same time as the samples of entrainable organisms are collected.

The following equation illustrates how to calculate a baseline level of entrainment (E_B):

$$E_B = E_D \times AIF$$

Performance commensurate with a closed-cycle recirculating system (E_{CCRS}) can therefore be determined by reducing E_B by the percentage of flow reduced through the use of a closed-cycle cooling system. For example, a facility withdrawing make-up water from a freshwater source (as described above, would achieve a reduction of 97.5 percent) will calculate its performance as follows:

$$E_{CCRS} = (E_B) \times (100 - 97.5) \div 100$$

The resulting value, E_{CCRS}, is the required level of entrainment performance (as measured by entrainment mortality). The facility could implement any combination of flow reduction, technologies, and operational measures to meet the required level of entrainment performance. For example, a facility withdraws 200 mgd AIF from a freshwater river. The annual average entrainment density in the proximity of the intake structure is 6,400 organisms per 100 cubic meters withdrawn.

$$E_B = E_D \times AIF$$

$$6{,}400 \text{ organisms}/100\text{m}^3 \times (100\text{m}^3/26{,}417 \text{ gallons}) \times 200{,}000{,}000 \text{ gallons per day}$$

$$= 48 \times 10^6 \text{ organisms per day}$$

The maximum entrainment mortality for a closed-cycle cooling system is thus

$$E_{CCRS} = (E_B) \times (100 - 97.5) \div 100$$

$$= (48 \times 10^6 \text{ organisms per day}) \times (100 - 97.5) \div 100$$

$$= 1.2 \times 10^6 \text{ organisms per day.}$$

The minimum required level of performance for demonstrating entrainment mortality at a comparable level (E_C) to a closed-cycle cooling system is the level corresponding to 90

percent [101] of the reduction that a facility with a closed-cycle cooling system could achieve:

$$E_C = (E_B) \times (100 - (97.5 \times .9)) \div 100$$
$$= (48 \times 10^6 \text{ organisms per day}) \times (100 - (97.5 \times .9)) \div 100$$
$$= 5.88 \times 10^6 \text{ organisms per day.}$$

The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(d), endangered species requirements under § 125.94(g), interim standards under § 125.94(h), and any more stringent standards under § 125.94(i).

In addition, all facilities will either conduct visual inspections or employ remote monitoring devices when the cooling water intake structure is in operation. The facility will conduct such inspections at least weekly to ensure that any technologies installed to comply with § 125.94 are maintained and operated to ensure that they will continue to function as designed. EPA is aware that for some facilities, this requirement could pose a feasibility challenge (for example due to ice cover in the winter season, inability of divers to see through more than a few inches of water, or certain intakes in deep water). The rule, therefore, authorizes the Director to establish alternative procedures. See § 125.96(e).

H. What reports am I required to submit?

1. Status Reports

If the Director establishes a compliance schedule, the Director will also establish any status reporting requirements. These reports may include updates on biological monitoring, technology testing results, construction schedules, or other appropriate topics and serve as milestones for the facility and the Director to evaluate the progress of the facility in meeting BTA. See §§ 125.94(b) and (d) and 125.97(b).

2. Monitoring Reports

The required reports for monitoring activities are similar to requirements that are already in NPDES permits for effluent discharges. EPA expects such reports to be included with the Discharge Monitoring Reports (DMRs) or equivalent state reports. Facilities would report any monitoring, demonstration, and other information required by the permit sufficient to determine compliance with the permit requirements established under § 125.94, as well as any other monitoring requirements specified in the permit. See 40 CFR 125.97(a).

Entrainment requirements will be determined on a site-specific basis by the Director. For facilities that are required to install entrainment controls, EPA expects that these facilities would generally conduct ongoing flow (or other) monitoring as verification that entrainment has been reduced. See § 125.96(b) and (c). However, the Director may require facilities to report entrainment monitoring and analysis, including:

- The compliance measurement location.
- A description of the flow monitoring procedure.
- Documentation of flow reductions.
- Any other monitoring requirements specified in the permit.

The report must include any monitoring and analysis required as part of additional measures for threatened and endangered species, shellfish, or fragile species as established by the Director. Further, your report will include documentation of cooling water that is process water, gray water, waste water, reclaimed water, or other water reused as cooling water in lieu of water obtained by an intake. The Director will evaluate these reports for compliance with permit requirements as appropriate.

3. Annual Certifications

Today's rule requires a facility to submit an annual certification statement signed by the responsible corporate officer. See § 125.97(c). In most cases, the statement would indicate the information from the previous statement is still pertinent. If modifications were made to the facility that impacts cooling water withdrawals or operation of the cooling water intake structures, the statement would indicate such, and the facility would submit revisions to the information required in their permit application at § 122.21(r).

4. Other Reporting

In addition, EPA notes that supplemental reporting may be required under the ESA as part of any incidental take statement or permit (50 CFR 402.14(i)) or a section 10 permit (50 CFR 222.307) that is issued by the United States Fish and Wildlife Service or the National Marine Fisheries Service to ensure compliance with the Endangered Species Act.

I. What records will I be required to keep?

As described at § 125.97(d), facilities are required to keep all permit applications, status, monitoring, and annual reports and related supporting information and materials at least until the subsequent permit is issued. Facilities might wish to keep records for a longer period to maintain a complete regulatory history of the facility. For example, existing source water biological studies submitted with a facility's permit application could contain data that has been collected in the past 10 or more years. When the Director has approved a request for reduced information collection in the permit application, the rule requires that records of submissions that are part of a previous permit application be kept until the subsequent permit is issued. See § 125.95(e). Records supporting the BTA determination for entrainment must be kept until such time as the Director revises the determination. The Director may establish additional record-keeping requirements in the permit, such as additional records documenting compliance monitoring, data collection, or more frequent reports.

Facilities must also keep records of all data used to complete the permit application and show compliance with the requirements of § 125.94, any supplemental information developed under § 125.95, and any compliance monitoring data submitted under § 125.96. The Director may require that these records be kept for a longer period.

J. What are the respective Federal, State, and Tribal roles?

Today's final rule affects authorized State and Tribal NPDES permit programs. Under 40 CFR 123.62(e), any existing approved section 402 permitting program must be revised to be consistent with new program requirements within one year from the date of this promulgation, unless the NPDES-authorized State or Tribe must amend or enact a statute to make the required revisions. If a State or Tribe must amend or enact a statute to conform to today's final rule, the revision must be made within two years of this promulgation. States and Tribes seeking new EPA authorization to implement the NPDES program must comply with the requirements when authorization is approved. This final regulation does not alter State authority under section 510 of the CWA.

In addition to updating their programs to be consistent with today's final rule,

[101] The 90 percent metric is required in Phase I, and adopted here because new units are subject to requirements similar to the Phase I requirements. Phase I, at 40 CFR 125.86 specifies, ''reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through § 125.84(b)(1) and (2).''

States and Tribes authorized to implement the NPDES program are required under NPDES State program requirements to implement the cooling water intake structure requirements of subpart J following promulgation of the final regulations. The permit requirements in this final rule must be implemented upon the first issuance or reissuance of permits following promulgation. Duties of an authorized State or Tribe under this regulation are described throughout this section and include reviewing permit application materials, determining appropriate requirements, reviewing monitoring and reporting data, and assessing whether a facility is complying with the final rule's requirements.

EPA recognizes that some States have invested considerable effort in developing and implementing section 316(b) permits. This final regulation at § 125.98(b) and (g) allows the Director flexibility where there are ongoing permit proceedings or where a BTA determination has already been made based on substantially the same information required at § 122.21(r).

EPA will implement these requirements where States or Tribes are not authorized to implement the NPDES program.

K. Protection of Endangered and Threatened Species and Designated Critical Habitat

1. Existing Requirements Under Section 9 of the Endangered Species Act

The ESA imposes duties not just on Federal agencies but also on other entities. Section 9 of the ESA specifically provides that it is unlawful for any person to ''take'' any endangered species of fish or wildlife except under defined circumstances. The Services (National Marine Fisheries Service or U.S. Fish and Wildlife Service) may provide an exemption to the prohibition on take in one of two ways. Take may be permitted under section 10 of the ESA (16 U.S.C. 1539) or the Services may provide an exemption for take that is incidental to otherwise legal activity through a statement that is included with the Services' biological opinion developed during Federal agency consultation. (16 U.S.C. 1536(o)) The incidental take statement specifies the terms and conditions necessary to implement reasonable and prudent measures which minimize incidental take.

Nothing in today's rule changes the existing, independent obligations of the facilities subject to this rule under section 9 of the ESA. Unless exempted by an incidental take statement or section 10 permit, facilities have been prohibited from taking (for example, harming or killing) endangered species of fish or wildlife. In order to obtain a section 10 permit, the facility would be required to develop a Habitat Conservation Plan (HCP), which is a mandatory component of an incidental take permit application. The HCP must specify the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, the alternative actions to the taking that the applicant considered, the reasons for not utilizing those alternatives, and other necessary or appropriate measures that the Secretary may require.

2. EPA's Consultation Under Section 7 of the ESA

Under section 7 of the Endangered Species Act, each Federal agency must insure that any action authorized, funded, or carried out by the agency ''is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical. . . .'' 16 U.S.C. 1535(a)(2). In the case of any Federal agency action subject to the ESA that may affect listed species or critical habitat, the Federal agency must consult with the concerned offices with responsibilities under the ESA, specifically NMFS and/or FWS. 50 CFR 402.14(a).

In July 2012, EPA began informal consultation with the NMFS about the proposed section 316(b) regulations. In October 2012, EPA began informal consultation with the FWS. EPA prepared a draft biological evaluation of the effects of this rule on threatened and endangered species and in it concluded that the rule was not likely to adversely affect listed species or designated critical habitat. EPA was unable to obtain the Services' concurrence on EPA's ''not likely to adversely affect'' finding. In June 2013, EPA requested formal consultation with the Services under the Endangered Species Act and with that request submitted a final biological evaluation to the Services. EPA completed consultations with the Services and has included the Services' biological opinion and associated documents in the record for this rulemaking.

Among the organisms potentially subject to impingement and entrainment at cooling water intake structures are those that are listed as threatened and endangered. In addition to impinging or entraining threatened and endangered species, operation of CWISs may also adversely affect their critical habitat. Today's rule includes a number of provisions specifically designed to address incidental take of all federally-listed threatened and endangered species and to insure that the rule is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. These provisions are described below.

The regulatory model adopted by EPA in the Phase I rule and later in the subsequently-withdrawn Phase II rule for large existing power producing facilities provided a structure to address and minimize adverse impacts to threatened and endangered species. EPA's approach required that facilities subject to the 316(b) rules, at the permit application stage of the permitting process must, among other things, identify threatened and endangered species that might be subject to impingement and entrainment in order to ensure that the permitting authority would have the requisite information on which to make a decision about the need for controls to protect threatened and endangered species. See 40 CFR 122.21(r)(4).

The Phase I and Phase II regulations specifically authorized the permit writer (referred to as the ''Director'' in EPA's permitting regulations) to adopt measures designed to protect threatened and endangered species. Thus, for example, EPA's Phase I regulations for cooling water intake structures at new facilities require that, under one of the compliance options, an owner or operator must select and implement impingement and entrainment minimization measures ''if there are threatened or endangered or otherwise protected Federal, State or Tribal species.'' Moreover, the permit writer may require additional impingement and entrainment reduction measures if the permit writer determines that the facility after meeting the required performance standard would ''still contribute unacceptable stress to the protected species, critical habitat of those species or species of concern.'' 40 CFR 125.84(b)(4) & (5).

The Phase II regulation continued the general approach followed in the Phase I regulation for protection of threatened and endangered species. Permit applicants needed to submit the same information on threatened and endangered species required in the Phase I rule. In addition, building on the earlier information requirements, the regulation also would have required facilities selecting and implementing certain of the alternative BTA

compliance measures to submit a Comprehensive Demonstration Study that, among other things, characterized impingement and entrainment at the facility. Further, the rule would have required a facility to submit an Impingement Mortality and/or Entrainment Characterization Study that included taxonomic identification, characterization and documentation of current impingement mortality and entrainment of all life stages of fish, shellfish and any species protected under Federal, State or Tribal law (including threatened or endangered species). 69 FR 41687–88, July 9, 2004. In addition, the Phase I and II rules included a requirement for the facility to include in their permit application documentation of any public participation or consultation with Federal or State agencies on impacts of their cooling water intake structure on threatened and endangered species. The regulation then would have required the permit writer to determine appropriate permit requirements and conditions. EPA noted that its existing NPDES permitting regulations reference a number of Federal laws that might apply to Federally-issued NPDES permits, including the Endangered Species Act. 69 FR 41643–44, July 9, 2004.

Threatened and endangered species were important considerations in the proposal to today's rule and were of particular concern to the EPA. The preamble to the proposal reflects at a number of points that, in looking at the benefits of different regulatory options, EPA attempted to assess the benefits to threatened and endangered species. See 76 FR 22174, 22197, 22207. The proposal also noted the importance of obtaining information for the permit writer about potential entrainment reductions. Thus, the proposal would have required certain facilities to develop and submit with their permit application detailed information on their operations as well as an engineering study of the technical feasibility and incremental costs of candidate entrainment mortality control technologies and a detailed discussion of the magnitude of non-water quality benefits. EPA proposed that some facilities would need to submit an Entrainment Characterization Study that included an entrainment mortality data collection plan that would indicate, at a minimum, taxonomic identification, latent mortality identification, documentation of all methods, and quality assurance/quality control procedures or sampling and data analysis appropriate for a quantitative survey. Under the proposal, EPA would also have required peer review of the entrainment mortality data collection plan. Peer reviewers would be selected in consultation with the Director who may consult with EPA and Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Further, facilities with greater than 125 mgd AIF would complete an entrainment study. The entrainment study could include information already collected to meet the Phase II requirements at § 122.21(r)(2)–(r)(4) before those requirements were suspended.

EPA and the Services have completed consultations on the rule. EPA has received the final biological opinion and associated documents from the U.S. Fish and Wildlife Service and the U.S. National Marine Fisheries Service and has included them in the record for the rule. The Services have concluded that the rule is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat.

3. Final Rule Provisions Related to Threatened and Endangered Species

As noted previously, establishing standards for cooling water intake structures to minimize impingement and entrainment of all aquatic organisms will promote and enhance protection of T&E species. In addition, the rule contains a number of provisions that specifically concern T&E species; these provisions were developed in light of EPA's consultation with the Services and were established by EPA to insure that this rule is not likely to jeopardize listed species or result in the destruction or adverse modification of designated critical habitat. To be clear, the ESA provisions of the rule extend to all listed T&E species, not just fish and shellfish.

The treatment of T&E species in today's rule follows directly from the Agency's longstanding approach as well as from EPA's proposed 2011 rule which indicated the EPA's intention to address protection of T&E species. The rule adopts the identical approach followed in the Phase I and II rules, while adding some refinements to that earlier model which EPA discussed in the proposed rule. First, it adopts the proposed requirements that insure an adequate information base is submitted to the permit writer. As was the case with the Phase I and withdrawn Phase II rule, apprising the permit writer of the presence and extent of T&E species at a facility's intake continues to be an important element of the permit application requirements for existing facilities. While retaining the existing permit application requirement of 40 CFR 122.21(r), EPA has included in today's rule a provision at § 125.95(f) that requires a facility in its permit application to identify all Federally-listed threatened and endangered species and designated critical habitat that are or may be present in the action area. The action area can generally be considered the area in the vicinity of the cooling water intake structure. The evaluation is to be based on information readily available to the facility at the time of the permit application. In addition, the rule requires the largest withdrawing facilities to provide taxonomic identification of species in the vicinity of the intake, thus providing a mechanism for facilities to determine more accurately their potential impact on protected species.

The rule requires that the Director transmit all permit applications to the Services upon receipt. The rule provides the Services with 60 days to review the permit application. This 60 day review takes place prior to the public notice of the State or Tribe's draft or proposed permit. EPA expects that the Services will respond within 60 days and provide to the Director (1) any corrections to the list of Federally-listed threatened and endangered species and critical habitat included in the permit application, (2) any measures that the Services recommend (including monitoring and reporting) for the protection of listed species, including any measures that would minimize any incidental take of listed species, and/or avoid likely jeopardy to a listed species or destruction or adverse modification of critical habitat, and/or (3) notify the State or Tribe that the Service(s) have no corrections to the list of species and critical habitat and/or that the Service(s) do not recommend any control measures. The Services' 60 day review period does not constrain the Director's ability to process the applicant's permit application; however, the Director may not propose/publish the draft permit until the 60 day review period has ended, unless the Director has received the Services' response prior to that time.

In addition, the Services will receive, pursuant to existing regulations at 40 CFR 124.10(c)(1)(iii) and (e), all permit applications, as well as fact sheets or statements of basis (for EPA-issued permits), draft permits, and public notices for all permits. At this stage of the process, the Services will have the opportunity to review the draft permit and other materials and provide any

additional input or suggested control measures to address effects to listed species or critical habitat. Together, the existing and new requirements related to transmittal of permitting documents to the Services will ensure that the Services have the opportunity to provide information and recommendations to the permit writer relating to any facility that may affect listed species. This information will be part of the public record for the permitting decision and the Director would be required to consider it as a relevant factor, along with all of the other relevant factors, in deciding what conditions to establish in the permit. Further, as explained in the MOA between EPA and the Services discussed elsewhere in today's notice, EPA will use the full extent of its CWA authority to object to a permit where EPA finds that issuance of the permit is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The rule's requirements insure a full vetting of information and concerns in the permitting process that must be considered by the Director. These requirements, coupled with the EPA's commitment to exercise its oversight authority, insure that today's rule is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

Among the recommendations that may be made by the Services to the facility and the Director are measures to minimize incidental take. EPA expects that any measures the Services recommend to minimize incidental take will be consistent with ESA regulations and guidances concerning reasonable and prudent measures. As stated in the ESA regulations under 50 CFR 402.14(i)(2), ''Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.'' The Endangered Species Handbook (FWS and NMFS, 1998) explains that: ''Measures are considered reasonable and prudent when they are consistent with the proposed action's basic design (e.g., narrowing of disturbed right-of-way at known species locations), location (e.g., temporary storage of equipment or other materials), scope, duration, and timing. Reasonable and prudent measures and terms and conditions should be developed in coordination with the action agency and applicant, if any, to ensure that the measures are reasonable, that they cause only minor changes to the project, and that they are within the legal authority and jurisdiction of the agency or applicant to carry out.''

Installation of closed-cycle cooling is a major design alteration of a facility involving significant design and construction activities (the range of costs associated with closed-cycle cooling is described elsewhere in today's notice). Because installation of closed-cycle cooling does alter the basic design of a facility and would involve more than minor changes, as described in the Services' regulations and Handbook, EPA does not expect that installation of closed-cycle cooling would be specified as a measure solely for purposes of minimizing incidental take. The final rule at § 125.98(j) provides that nothing in this rule authorizes the take of threatened or endangered species of fish or wildlife. However, the Services may exempt take through an incidental take statement issued pursuant to ESA section 7(o) or a permit under ESA section 10. See 16 U.S.C. 1536 (o) and 16 U.S.C. 1539.

This Clean Water Act rule cannot authorize take and does not purport to do so (nor can NPDES permits authorize take prohibited under the ESA). Accordingly, under § 125.98(b)(1), the permit writer, including EPA, must include, in the 316(b) permit requirements, standard language that states the permit does not authorize the take of Federally-listed threatened and endangered species. In addition, under § 125.96(g) (additional monitoring requirements) and § 125.97(g) (additional reporting requirements),where the Director requires additional measures to protect listed species, monitoring and reporting requirements associated with those measures will be included in the permit.

4. EPA Oversight of State-Issued NPDES Permits To Protect Threatened and Endangered Species

In 2001, the EPA, FWS, and NMFS signed a Memorandum of Agreement (MOA), (66 FR 11202, Feb. 22, 2001) with the objective of enhancing coordination between the agencies and to assist the agencies in executing their respective responsibilities under the Clean Water Act and Endangered Species Act. The MOA reflects, in part, the EPA's longstanding commitment to overseeing the operation of state NPDES programs to ensure protection of endangered species with existing regulatory requirements. The EPA reaffirms its commitment to ensure coordination of the EPA's and Services' programs and appropriate protection of listed species, and EPA will follow the procedures in the MOA in overseeing implementation of this rule.

The MOA committed the EPA to a number of specific actions that are pertinent to today's rule. Under the MOA, EPA committed, when contacted by the Services, to coordinate with the Services and the State/Tribe during the permit development process, in order to ensure that permits will comply with all applicable CWA requirements. One way in which coordination between EPA and the Services is facilitated is through the exchange of information about permits. The MOA facilitates such information exchange, as do EPA's NPDES permit regulations at 40 CFR 124.10, that preceded the MOA. These regulations require the Director to provide public notice and a comment period for draft permits, and to notify persons identified at 40 CFR 124.10(c)(1)(iii) and (iv). Such persons specifically include Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resource and over coastal zone management plans and thus include the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

EPA's commitment to coordinate effectively with the Services includes following the procedures in section IX.A.6 and 7 of the MOA:

EPA may make a formal objection, where consistent with its CWA authority, or take other appropriate action, where EPA finds that a State or Tribal NPDES permit will likely have more than minor detrimental effect on Federally-listed species or critical habitat.

For those NPDES permits with detrimental effects on Federally-listed species or critical habitat that are minor, it is the intention of the Services and EPA that the Services will work with the State or Tribe to reduce the detrimental effects stemming from the permit. For those NPDES permits that have detrimental effects on Federally-listed species or critical habitat that are more than minor, including circumstances where the discharge fails to ensure the protection and propagation of fish, shellfish and wildlife, and where the State or Tribe and the Services are unable to resolve the issues, it is the intention of the Services and EPA that EPA would work with the State or Tribe to remove or reduce the detrimental impacts of the permit, including, in appropriate cases, by objecting to and Federalizing the permit where consistent with EPA's CWA authority.

EPA will use the full extent of its CWA authority to object to a State or Tribal permit where EPA finds (taking

into account all available information, including any analysis conducted by the Services) that a State or Tribal permit is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

EPA may review or waive review of draft State or Tribal NPDES permits (40 CFR 123.24(d)). EPA will work with the Services through the local/regional coordinating teams to help determine which categories of permits should be reviewed for endangered species concerns. If EPA finds that a draft permit has a reasonable potential to have more than a minor detrimental effect on listed species or critical habitat, and review of a draft permit has been waived, EPA will withdraw this waiver during the public comment period (see 40 CFR 123.24(e)(1)).

The grounds for EPA's exercise of its discretionary authority to object to State or Tribal permits are described in the NPDES regulations at 40 CFR 123.44. These include that the proposed permit fails to comply, or to ensure compliance with, any applicable requirement of this part, for example, that a permit application did not contain information sufficient to demonstrate that the permit will ensure compliance with applicable requirements. See 40 CFR 123.44(c)(1).

If EPA objects to a NPDES permit under the MOA, EPA will follow the permit objection procedures outlined in 40 CFR 123.44 and coordinate with the Services in seeking to have the State or Tribe revise its permit. A State or Tribe may not issue a permit over an outstanding EPA objection. If EPA assumes permit issuing authority for a NPDES permit, EPA will consult with the Service prior to issuance of the permit (as a Federal action) as appropriate under section 7 of the ESA.

While the MOA was adopted by the agencies in the context of NPDES permits for discharges of pollutants, it applies equally to NPDES permits that contain conditions for cooling water intake structures. Moreover, section 316(b) of the CWA accords EPA broad authority to protect waters of the United States from adverse environmental impacts associated with cooling water intake structures, including adverse effects to Federally-listed species and designated critical habitat. In implementing this provision, EPA is authorized to consider costs and benefits of different approaches to minimizing these impacts. The importance of listed species, and accordingly the benefits associated with preventing their extinction, animated Congress's enactment of the Endangered Species Act in 1973. In the case of aquatic organisms that are listed as endangered or threatened, and designated critical habitat, EPA has the authority, and will exercise the full extent of its authority, to object to a permit proposed by a State where EPA finds (taking into account all available information, and giving, as appropriate, substantial weight to the views of the Services) that a State or Tribal permit is likely to jeopardize the continued existence of such species or result in the destruction or adverse modification of such critical habitat. If the State permit is not modified to address EPA's objections, EPA will issue the permit in consultation with the Services. EPA's commitment to use the full extent of its CWA authority to object to permits that are likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat is a safeguard for the protection of listed species and critical habitat. Additionally, where the Service communicates in writing to EPA its conclusion that a proposed State permit is likely to jeopardize the continued existence of a listed species, EPA will, upon request, provide the Service a written response. EPA's commitment to use the full extent of its CWA authority, along with the other provisions of the rule requiring the EPA, the Services, and State Directors to fully consider effects to threatened and endangered species and critical habitat and include appropriate protections in NPDES permits, insures that the rule is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat.

L. Permits for Existing Facilities Are Subject to Requirements Under Other Federal Statutes

EPA's NPDES permitting regulations at § 122.49 list Federal laws that might apply to the issuance of NPDES permits under the NPDES rules. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.;* the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.;* the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.;* and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* For a brief description of each of these laws, see § 122.49. The provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* relating to essential fish habitat might also be relevant. EPA's permit application requirements ensure that FWS and NMFS will have—and other Federal agencies as well, should have—a broader information base from which to make informed decisions. Note also that, in the case of EPA-issued permits, EPA's NPDES permitting regulations specifically require following the requirements of specific Federal laws that may apply to the issuance of NPDES permits.

IX. Cost Development and Economic Impact Analysis

This section summarizes EPA's analysis of the social cost and economic impact for three regulatory options. In addition to today's rule, referred to as the Final Rule, EPA analyzed two other options similar to those options at proposal (see section VI.D Other Options Considered for Today's Final Regulation for more context). The regulatory options can be described as follows:

- Final Rule: Flexible impingement mortality performance standard for existing units based on modified traveling screens with fish returns for all facilities with DIF greater than 2 mgd, closed-cycle cooling or its equivalent for new units for impingement and entrainment, and a national BTA standard that requires a site determination of entrainment BTA for all other existing units at existing facilities;
- Proposal Option 2: Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 125 mgd, flexible impingement mortality limitations based on modified traveling screens with fish returns for all facilities with DIF greater than 2 mgd, and closed-cycle cooling or its equivalent for new units; and
- Proposal Option 4: Flexible impingement mortality limitations based on modified traveling screens for all facilities with DIF greater than 50 mgd, closed-cycle cooling or its equivalent for new units, and a site-specific determination of entrainment BTA for all other facilities and for impingement mortality controls at facilities with flow less than or equal to 50 mgd.

The first part of this section provides an overall summary of the costs of the regulatory options to regulated facilities and Federal and State governments. This discussion is followed by a review of the method for developing compliance cost estimates. The third part provides an estimate of the total social costs of the regulatory options. The final part reviews the economic impact of the regulatory options.

A. Overview of Costs to Regulated Facilities and Federal and State Governments

In estimating the total cost of the regulatory options, EPA estimated costs for the following components: capital costs and other one-time costs; installation downtime costs; annual operation and maintenance costs; and recordkeeping, monitoring, entrainment-related studies, and reporting costs. All of these costs are included in the economic impact analysis for the final rule. The cost estimates reflect the incremental costs attributed only to this final rule. For example, facilities already having closed-cycle recirculating systems as defined at § 125.92 will meet the impingement mortality and entrainment standards of today's rule and, therefore, will not incur costs to retrofit new technologies. These facilities, including those in New York and California, will still incur permitting costs. EPA has established that existing closed-cycle recirculating systems will comply with the impingement BTA requirements.

For the economic analysis, EPA distinguished between the two industry groups regulated by the standards for existing facilities as follows:

- Electric Power Producers (electric generators)—facilities owned by investor-owned utilities, municipalities, States, Federal authorities, cooperatives, and nonutilities, whose primary business is electric power generation or related electric power services.
- Manufacturing and Other Industries (manufacturers)—facilities in the paper, aluminum, steel, chemicals, petroleum, food and kindred products (primary manufacturing industries), and other industries. In addition to engaging in production activities, some of these facilities also generate electricity for their own use and occasionally produce excess power for sale.

For a more detailed discussion of costs to regulated facilities and costs to Federal, State, and local governments, see Chapter 8 of the TDD and Chapter 3 of the EA.

Electric generators incurring costs include facilities owned by private firms, governments, and electric cooperatives. Manufacturers incurring costs include facilities owned by private firms only. The administrative costs to Federal, State, and local governments include the costs of rule implementation—e.g., permits, monitoring, and working with facilities subject to the final rule to achieve compliance.

In the economic analysis, EPA accounted for these costs on an as-incurred basis. They are reported on a pre-tax or after-tax basis, depending on the specific component of the analysis. These costs also underlie the analysis of the social costs of the regulatory options.

B. Development of Compliance Costs

This section describes the data and methods used to estimate compliance costs of the options considered for today's final rule. Costs were developed for technology controls to address impingement mortality separately from technology controls for entrainment because the requirements of the various rule options considered may lead to different technologies being used by each facility to comply. The options considered may impose different compliance timelines for impingement mortality and entrainment control technologies, although decision making has been synchronized to avoid investments in impingement BTA controls that could later be rendered obsolete by the BTA requirements for entrainment. Different methodologies were used and each is briefly described below. More detailed information on these methodologies and costs of other technologies and regulatory approaches are available in Chapter 8 of the TDD.

1. Combined Facility-Specific and Model-Facility Approach

EPA estimated national level costs for regulated facilities under the final rule and other regulatory options. In general, facility-specific data can be used to determine the requirements that apply to a facility and whether that facility already meets the final rule's requirements. This approach requires facility-specific technical data for the approximately 1,065 facilities that EPA estimates will be subject to the final rule. The change in the number of facilities subject to the final rule compared to the number estimated at proposal is attributable to changes in how EPA accounted for baseline closures. See Appendix H of the EA for more details. An alternative approach is to develop a series of model facilities that exhibit the typical characteristics of the regulated facilities and calculate costs for each model facility; EPA would then determine how many of each model facility would be needed to accurately represent the full universe of regulated facilities.

The approach used in this effort involved calculating compliance technology costs for 338 individual facilities for which EPA had detailed technical data from its questionnaires regarding the intake design and technology. Specifically, these are the facilities that completed the detailed technical questionnaire. Where facilities reported data for separate cooling water intake structures, EPA derived compliance technology costs for each intake, and summed these intake costs to obtain total costs for each facility. EPA used the actual facility data to construct model facilities. Each model facility's costs were then multiplied by a specific weighting factor, derived from a statistical analysis of the industry questionnaire, to obtain industry-wide costs. The weighting factors are similar to the ones derived during the development of the 2004 Phase II and 2006 Phase III rules.

2. Updates to the Survey Data

For the 2004 Phase II rule analysis, EPA developed facility-specific cost estimates for all facilities and published those costs in an appendix (69 FR 41669, July 9, 2004). Since the initial implementation of the 2004 Phase II rule, EPA identified several concerns with using only the facility-specific costing approach, and the use of those costs in Appendix A. Since 2004 EPA has collected data from industry and other groups as described in Section III of the proposed rule (76 FR 22183, April 20, 2011). These data generally reflect changes to actual intake flow, design intake flow, intake velocity, technology in place, and operational status. EPA developed a new master database including this new data to supplement the data from the detailed technical questionnaire. Although it has been more than 10 years since the detailed technical questionnaire was initially collected, EPA has undertaken more than 50 site visits and reviewed available literature. In addition, EPA compared its data with that collected by Edison Electric Institute, Electric Power Research Institute, and the Energy Information Administration. On the basis of that review, EPA concluded that the master database is representative and reasonably reflects costs for all facilities.[102] The following section describes how EPA used this new database to estimate compliance costs.

3. Tools for Developing Compliance Costs

During development of the 2004 Phase II rule, EPA began developing a spreadsheet-based tool that would provide facilities and permit authorities with a simple and transparent method for calculating facility-specific

[102] EPA notes that, while it has not collected updated technical information for every facility, it has updated financial data, as discussed later in this section.

compliance costs. EPA refined the tool in developing the Phase III regulations. EPA has since made further refinements to the cost tool, which was used to calculate the compliance costs for impingement mortality for today's final rule. The cost tool employs a decision tree (for a graphical presentation of the decision tree, see Chapter 8 of the TDD) to determine a compliance response for each model facility. The decision tree assigns a technology costing ''module'' for the retrofit to a given technology. Impingement cost estimates are derived through a series of computations that apply facility-specific data (such as DIF, width of intake screens, and such) to the selected technology module. Cost tool outputs include capital costs, incremental operation and maintenance costs, and installation downtime (in weeks).

To calculate the compliance costs of retrofitting to closed-cycle cooling for controlling entrainment, EPA used a second tool based on a cost-estimating spreadsheet using a modified version of a similar tool developed by the Electric Power Research Institute (EPRI). EPRI's first draft methodology presented three levels of capital cost according to the relative difficulty of the retrofit project (easy, average, and difficult). For electric generators, EPA used costs for the average level of difficulty because it was developed across a broad spectrum of facilities and is the most appropriate for estimating national level costs rather than lower or upper bounds. For manufacturers, EPA used the difficult level of retrofit costs. This reflects the more complex water systems and technical challenges to retrofitting closed-cycle cooling at multiple locations within a manufacturing facility. In site visits, EPA found the largest manufacturing facilities had multiple intakes, distributed the water to multiple production processes, have already significantly increased water reuse as a result of water audits, and generally operate a complicated water distribution network at the entire facility, and would therefore require multiple retrofits to convert the facility to be commensurate with closed-cycle recirculating system.[103] Accordingly, EPA determined that the difficult level of retrofit costs is more representative for purposes of estimating national level costs. EPA's tool includes additional modifications to EPRI's methodology, such as increased compliance costs for approximately 25 percent of facilities to reflect the additional expense of noise control or plume [104] abatement, and using only the cooling water flow rate for non-contact cooling water flow [105] for purposes of estimating costs for closed-cycle cooling. EPA has included the spreadsheet tools in the docket for today's final rule to assist both facilities and permit authorities in estimating compliance costs (see DCNs 12–6650 and 12–6651 for the cost tool, as well as and DCN 10–6930 for EPRI's retrofit analysis).

4. Which technologies form the basis for compliance cost estimates?

EPA identified two broad classes of control technologies that may be used singularly or in combination to comply with the final rule. These classes of control technologies are (1) technologies that address impingement mortality, and (2) technologies that address entrainment. For further details, see Section VI.

For the impingement mortality requirements, EPA analyzed data from a wide variety of technologies and facilities, and concluded that modified (Ristroph or equivalent) ⅜″ mesh traveling screens with fish-friendly fish handling and returns are the most appropriate basis for determining compliance costs.[106] As discussed in Section VI of this preamble, a facility may also comply with impingement mortality requirements by meeting a low velocity compliance alternative, operating a closed-cycle recirculating system as defined at § 125.92(c), or employing an existing offshore velocity cap as defined at § 125.92(v). On the basis of facility-specific data, EPA made a preliminary assessment of which model facilities would not currently meet impingement mortality requirements through any of these pre-approved technologies, and assigned technology costs on the basis of modified traveling screens with a fish handling and return system if the existing intake used traveling screens. If the intake does not currently use traveling screens, EPA assigned costs for installing technologies that would comply with the low velocity compliance alternative (larger intakes, wedgewire screens, or variable speed pumps) based on site-specific conditions. These assigned technologies will meet the BTA standard (see § 125.94(b)). Although EPA no longer requires installation of barrier nets or equivalent technologies to protect shellfish in all tidal waters, EPA included the cost of barrier net technology at approximately 10 percent of the intakes as a cost component for the ''systems'' approach to compliance with the IM standards.

EPA also analyzed the costs of those options associated with entrainment requirements based on wet cooling systems. EPA also evaluated other technologies for reducing entrainment, such as seasonal operation of cooling towers, partial towers, variable speed pumps, and fine-mesh screens. The costs of the final rule include but are not limited to permit applications; characterization of the source water, intake structures and any technologies in place; studies of impingement and entrainment; and recordkeeping, monitoring, and reporting. The costs also include costs of technologies for complying with the BTA for IM; the cost of additional technologies that may be required to meet the site-specific BTA for entrainment are not included, nor are costs for additional measures that may be required for protection of listed threatened and endangered species. Section VI further describes the performance of these technologies. A detailed discussion of how the costs were developed is in Chapter 8 of the TDD.

5. How is installation downtime assessed?

Installation downtime is the length of time that a facility might need to shut down for installing a compliance technology. Downtime estimates primarily assume that the facility would need to completely shut down operations for some portion of the installation period to retrofit an intake, such as relocating an intake, connecting wet cooling systems into the facility, or reinforcing condenser housings. EPA estimated downtime as incremental outages, taking into account the periodic outages all facilities incur as part of preventative maintenance or routinely scheduled outages. For example, nuclear facilities have refueling outages approximately every 18 months lasting

[103] A refinery, for example, may have dozens of heat exchange processes throughout the facility, including a mix of wet and dry non-contact cooling equipment.

[104] The EPRI tool includes drift abatement technologies in its cost assumptions, so no additional costs were included for drift eliminators.

[105] As described in the TDD, EPA used only non-contact cooling water flows in determining the proper size for wet cooling towers. Cooling towers are not widely used for contact cooling or process water, so these flows were excluded. For electric generators, the vast majority of flow is non-contact cooling, but manufacturers are more varied in their water usage.

[106] Note that this does not preclude the use of other technologies; EPA simply used the available performance data in deriving the performance requirements. EPA's research has shown that other technologies may also be capable of meeting the final rule requirements; however, these technologies are not available at all facilities.

approximately 40 days.[107] The entrainment control implementation periods under Proposal Option 2, 10 years for fossil fuel facilities and 15 years for nuclear facilities, would provide facilities with an opportunity to schedule the retrofit when other major upgrades are being done, thereby significantly reducing downtime.

For most facilities subject to impingement mortality, EPA assigned no incremental downtime. Facilities that are replacing or rehabilitating existing traveling screens typically do so one intake bay at a time without affecting the overall operations.[108] EPA has also found that facilities that need to scrub screens do so during other routinely scheduled outages. For some compliance technologies, however, such as relocating an intake or expanding an existing intake to lower the intake velocity, several weeks of downtime may be incurred because these are more invasive tasks. See TDD Exhibit 8–4 for EPA's net construction downtime for the various IM compliance technologies.

EPA reviewed historical retrofit data and site visits conducted since 2004 and has largely retained its assumptions for downtime from the Phase II and Phase III rules for facilities retrofitting to closed-cycle cooling. On average, EPA assumes the net installation downtime for retrofitting to closed-cycle cooling for non-nuclear electric generators is 4 weeks. This total downtime allows for the tie-in of the closed-cycle system to the existing cooling water system. The refueling outage downtime, the safety-sensitive nature of nuclear facility retrofits, and other data in EPA's record supports 28 weeks as the net construction downtime for nuclear facilities. EPA converted downtime for manufacturing facilities that use cooling water for power and steam generation into the incremental cost for purchasing electricity during the outage. For individual process units other than power generation units at a manufacturing facility, on average the downtime was assumed to be zero. In EPA's extensive experience with manufacturers, EPA's record reflects that manufacturers are generally able to shut down individual intakes for specific process lines, use inventory approaches such as temporary increases of intermediate products, and develop other workarounds without interrupting the production of the entire facility. For further discussion of how EPA accounted for installation downtime in estimating national costs, see below.

6. How is the energy penalty assessed?

The term *energy penalty* in relation to a conversion to closed-cycle cooling has a number of different interpretations. The first is the extra power required to operate fans at a mechanical draft cooling tower and additional pumping requirements (sometimes referred to as auxiliary energy requirements or parasitic loads). The second is the lost power output because of the reduction in steam turbine efficiency from an increase in cooling water temperature relative to once-through cooling (often referred to as the turbine efficiency penalty or turbine backpressure penalty). EPA is clarifying that it views the former as incremental O&M costs, and the latter is EPA's interpretation of the energy penalty. Energy penalty costs apply only to facilities retrofitting to closed-cycle cooling without replacing the condenser. Facilities installing a new impingement mortality technology will not generally face an energy penalty and will generally see little or no measureable change in auxiliary power consumption. EPA's national-level costs include both these costs. The auxiliary power consumption was included as a separate component in the operation and maintenance costs and was assessed for all facilities. The turbine efficiency penalty was typically expressed as a percentage of power output. EPA estimates the turbine efficiency energy penalty for nuclear and non-nuclear power generation would be 2.5 and 1.5 percent, respectively (see Chapter 8 of the TDD). For most manufacturers generating their own electricity, EPA assumed the same energy penalty for turbine efficiency loss as estimated for non-nuclear power facilities (i.e., 1.5 percent).

7. How did EPA assess facility-level costs for the national and regional economic impacts analysis?

As part of the economic impact analysis, EPA assessed the impact of the final rule's requirements on electric generators in the context of national and regional electricity markets. For this analysis, EPA used the Integrated Planning Model (IPM®), a comprehensive electricity market optimization model that assesses such impacts within the context of regional and national electricity markets. EPA has used IPM to analyze the impacts of various regulatory actions affecting the electric power sector over the last decade, particularly Clean Air Act regulations.

Because IPM requires facility-specific costs for each analyzed facility, yet compliance costs were developed as weighted sums of model facility costs, EPA developed a method to distribute the aggregate costs to facilities that were not themselves model facilities. For these facilities, EPA converted facility-level costs developed for model facilities to a cost per mgd DIF and then averaged these values to derive cost equations using DIF as the independent variable. These cost equations provide average costs that can be applied to any facility by simply scaling to that facility's DIF. For details on the IPM analysis, see the EA, Chapter 6. For details on facility cost development, see the TDD, Chapter 8.

8. How did EPA assess costs for new units?

Power generation and manufacturing units that are a *new unit* as defined at § 125.92(u) must meet an entrainment reduction performance standard based on closed-cycle cooling or an equivalent reduction in entrainment for the cooling water component of the intake flow based on the DIF. This section briefly describes the data and methods used to estimate compliance costs for new units at existing electric generators and manufacturers. Chapter 8 of the TDD has a complete description of the methodology.

a. New Units at Existing Electric Generators

Compliance costs for new units at existing electric generators are estimated using a similar methodology to that used for estimating compliance costs for existing facilities. As described in Chapters 6 and 8 of the TDD, however, there are a number of differences in costs between a closed-cycle cooling retrofit at an existing facility compared to installing closed-cycle cooling at a new unit. In general, these differences result in lower costs for the installation of a closed-cycle recirculating system at a new unit (as compared to a retrofit scenario), due to improved efficiency of the turbine, the elimination of construction downtime, greater ease of integrating the closed-cycle system into the design and construction of the new unit, offsetting costs of certain system and construction components, and greater overall system optimization.

EPA could not determine precisely which facilities will construct new units. Instead, EPA used an approach to estimate what portion of the new capacity (i.e., additional megawatts capacity to be constructed each year) would be subject to the final rule. Using national projections of increased

[107] Nuclear Energy Institute reported average length of outage from 2003 to 2009.

[108] EPA's data shows that facilities have an average of 4 to 5 bays.

generating capacity,[109] EPA categorized the new capacity into three groups for 316(b) compliance purposes: (1) Subject to the Phase I rule,[110] (2) subject to today's final rule, but projected to install a cooling system that complies with the rule regardless of the rule requirements,[111] and (3) subject to today's rule and projected to incur compliance costs. Exhibit IX–1 presents the estimated total new capacity and the estimated capacity for new stand-alone units.

EXHIBIT IX–1

Fuel type	Total including Phase I	Existing facility new units only
	New Capacity (MW)	Stand-Alone (MW)
Fossil Fuel	295	80
Combined Cycle	3,264	147
Total	3,559	227

Costs for closed-cycle cooling are assigned to a portion of new stand-alone units, as shown the generating capacities in Exhibit IX–3.

EXHIBIT IX–3

Fuel type	Annual only	24-year total only
	Stand-Alone MW	Stand-Alone MW
Fossil Fuel	8	191
Combined Cycle	15	353
Total	23	544

EPA then estimated the total costs for the third group (i.e., those units that would incur compliance costs) to comply with requirements for new units. EPA used certain assumptions regarding cooling system design to modify cost equations used for estimating closed-cycle retrofit costs at existing units and then applied the cost equations to the portion of projected new unit generating capacities that would be subject to the new unit provisions of today's rule. These costs include capital [112] and O&M costs, as well as a reduction in net generating capacity due to auxiliary power consumption to operate the closed-cycle recirculating system. Due to the complex nature of constructing a new unit, there is no increase in the length of the construction project as a result of employing a closed-cycle system; similarly, there is no downtime, as the unit has not yet begun operating. See Chapter 8 of the TDD for more information.

b. New Units at Existing Manufacturers

On the basis of site visits to manufacturing facilities, EPA has observed that manufacturers are increasingly taking advantage of water conservation and reuse measures as a means of cost-cutting. EPA also notes that manufacturers are subject to a wide variety of ELGs and that, in the course of complying with requirements for those ELGs, a facility may also reduce its intake flow. (See Chapter 4 of the TDD.) A new unit provides the opportunity to employ such measures to the fullest extent in designing the new unit. The availability of water conservation and reuse opportunities, coupled with operational flexibility at facilities with multiple industrial processes, leads EPA to conclude that facilities installing new units at existing manufacturers will comply with the new unit provisions through achieving the 90 percent reduction required at § 125.94(e)(2). Thus, EPA concluded that the new unit provisions would result in no additional compliance costs for achieving flow commensurate with closed-cycle cooling at new units.[113]

To the extent that manufacturers are not able to incorporate water reuse measures as a means of complying with the new unit provision, EPA's estimate of new unit costs for manufacturers may be an underestimate. Manufacturers generally withdraw less water than electric generators (including manufacturers who generate their own electricity). Thus EPA has concluded that any underestimation would be insignificant.

C. Social Costs

EPA assessed the costs to society resulting from the final rule and other options considered in development of this rule. The findings presented in this section assume that facilities with impoundments will qualify as having closed-cycle recirculating systems in the baseline.[114] As a result, EPA assigned no compliance technology costs to these facilities; however, these facilities remain subject to today's rule and are assigned administrative costs. To the extent that some of these facilities do not qualify as having closed-cycle recirculating systems in the baseline, the costs reported in this section may be underestimates. The social cost of regulatory actions includes costs to electric generators and manufacturers to comply with the final rule, and costs to States and the Federal government to administer the rule. These costs are the opportunity costs to society of employing scarce resources to prevent the environmental damage that would occur without today's rule. EPA estimated total social costs for existing and new units at existing facilities.

In estimating social costs, EPA assumed that the final rule and other options considered in development of this rule will not affect the aggregate quantity of electricity or other affected goods and services sold to consumers. Thus, the social cost of regulatory requirements includes no loss in consumer and producer surplus from reduced sales of electricity or other goods and services produced by regulated facilities. The Agency calculated the social cost of the final

[109] Capacity increases include considerations for fuel type. See Chapter 8 of the TDD for details.

[110] New capacity that is part of a new facility (as defined by the Phase I rule) is subject to separate requirements not addressed by today's rule. Today's requirements for new units require flow reduction commensurate with a closed-cycle recirculating cooling system.

[111] Data in the record show a marked increase in the use of closed-cycle cooling in facilities constructed in recent years and for those projected to be constructed in the near future. These data indicate that in the 1990s (prior to the Phase I rule), 83 percent of new cooling systems installed were closed-cycle cooling systems and that the current trend was approximately 97 percent. Based on these data EPA assumed that 75 percent to 90 percent of new units will be designed with a closed-cycle recirculating cooling system regardless of the requirements of today's rule. See DCN 12–6672. As a result, this category of new capacity was not assigned any compliance costs.

[112] The record indicates that the total estimated capital cost for installing a closed-cycle recirculating system at a new unit to comply with today's rule ranges from a negative value (as compared to the cost for installing a once-through system) to a positive value that could approach the cost of an existing facility retrofit. Said differently, if one assumes that the new unit would have constructed a new intake structure, EPA's record shows that the capital costs for the new unit once-through system would be greater than if the new unit installs a closed-cycle recirculating system. (See DCN 10–6650.) Alternatively, if the new unit did not require modification of the existing cooling system infrastructure, then the capital costs for installing a closed-cycle recirculating system would be similar to an existing facility retrofit minus some tie-in costs since the condenser is being replaced. While EPA envisions that the actual costs will vary (i.e., some will be in the negative portion of the range and others will be in the positive), EPA is also unable to project what cooling water intake arrangements a new unit will use. Consequently, for all new units, EPA selected a capital cost equal to the midpoint between the tower only and the easy retrofit costs. As a result, EPA assumed that the capital costs for these units was $154 per gpm in 2009 dollars which converts to $30,800 to $60,060 per MW capacity depending on fuel type. For a more detailed discussion, see TDD Chapter 8.

[113] EPA also notes that some manufacturers may also be able to increase reuse to a degree where the facility no longer meets the applicability thresholds of today's rule.

[114] In other words, EPA assumed facilities indicating use of an impoundment in response to their technical survey have lawfully created such impoundments for the purposes of cooling water.

rule and the other options considered using two discount rates: 3 percent and 7 percent.

For existing facilities, EPA assumes that all facilities subject to the final rule will begin bearing costs associated with today's rule beginning as soon as 2014, and likely complete investments associated with today's rule by 2030, depending on the technology-installation schedules for the final rule and other regulatory options considered.[115] EPA performed the social cost analysis over a 51-year period to reflect (1) the last year in which individual facilities are expected to achieve compliance (2030) under the final rule or any of the options considered, (2) the life of the longest-lived compliance technology installed at any facility (30 years), and (3) a period of five years after the last year of compliance technology operation during which benefits continue to accrue. Under this framework, the last year for which EPA has calculated projected costs is 2059, with benefits continuing beyond 2059, though on a diminishing basis, through 2064.[116]

To estimate social costs for existing facilities, EPA developed a year-explicit schedule of compliance outlays over the 46-year period from 2014 to 2059 according to cost-incurrence assumptions (for details on cost-incurrence assumptions, see EA, Chapter 3). EPA then adjusted these costs for predicted real change (i.e., adjusted for inflation) to the year of their incurrence and discounted all costs to the beginning of 2013, the promulgation year used for the analysis. Because the analysis period extends beyond the useful life of some compliance equipment, the social cost analysis accounts for re-installation of impingement mortality compliance technologies after the end of their initial useful life periods. However, for the regulatory option that requires a specific entrainment control technology (e.g., wet cooling systems)—Proposal Option 2—EPA does not expect regulated facilities to completely rebuild these systems (components such as piping and the concrete basin can be reused). EPA accounted for other technology replacement costs (such as pumps and fill material) as part of ongoing operations and maintenance expenses.

For new units at existing electric generators, EPA calculated an average annual amount of new capacity to be constructed during the 46-year social cost analysis period, beginning in 2014. While EPA does not expect the annual construction of new units to be constant, predicting the year-to-year fluctuations would be resource intensive. On average, EPA assumes that its estimate of new unit costs is reasonable. EPA accounted for compliance costs for these units on an as-incurred basis, as done for existing facilities. Similar to compliance costs for facilities subject to the final rule, EPA analyzed costs incurred by State and Federal governments for administering the regulation on a year-explicit basis over the 46-year social cost analysis period.

Exhibit IX–4 presents social costs for existing units at existing facilities under the final rule and other options considered, calculated using 3 percent and 7 percent discount rates. At the 3 percent discount rate, EPA estimates total annualized social costs of $272 million for the existing unit provision of today's rule, $252 million for Proposal Option 4, and $3,643 million for Proposal Option 2. At the 7 percent discount rate, these costs are $295 million for today's rule, $272 million for Proposal Option 4, and $3,583 million for Proposal Option 2.[117] See the EA (Chapter 7) for an explanation of why the annualized costs at the 3 percent discount rate are lower than the annualized costs at the 7 percent discount rate for the final rule and Proposal Option 4, while the inverse is the case for Proposal Option 2 (annualized costs at the 3 percent discount rate are higher than at the 7 percent discount rate). The largest component of social cost is the cost of regulatory compliance incurred by regulated facilities (as opposed to administrative costs estimated for States and the Federal government). These costs include (1) one-time technology and other initial costs of complying with the rule, (2) one-time costs of installation downtime, (3) annual fixed and variable operating and maintenance costs, including auxiliary energy requirement, (4) value of energy penalty from operation of compliance technology, and (5) permitting costs (initial and follow-up start-up costs, initial permit costs, annually recurring costs associated with monitoring, and non-annually recurring permitting costs).

Compliance costs estimated for electric generators account for the largest share of total compliance-related social cost and direct compliance cost under all three options. On a per-facility basis and at the 3 percent discount rate, the annualized pre-tax compliance costs for the electric generators segment under today's final rule are $0.4 million, $0.4 million under Proposal Option 4, and $6 million under Proposal Option 2.[118] For manufacturers, the average cost per regulated facility at the 3 percent discount rate is $0.1 million under the final rule and Proposal Option 4, and $0.4 million under Proposal Option 2.[119] EPA's analysis found a similar profile of per facility costs using the 7 percent discount rate (see EA Chapter 7 for additional detail). EPA's estimate of Federal and State government costs for administering this rule is small in relation to the estimated direct cost of regulatory compliance. EPA estimates $1 million in annual administrative costs to States and Federal government for the final rule, using both the 3 and 7 percent discount rates. These cost values are the same for Proposal Option 4. EPA estimates $0.7 million in annual administrative costs to States and the

[115] EPA conducted the cost and economic impact analyses on a calendar-year basis. For these analyses, EPA used calendar year 2013 as the promulgation year of today's rule and 2014 as the first post-promulgation analysis year. This slight difference from the actual promulgation year of 2014 results from the fact that EPA completed its cost and economic impact analyses for the final rule and alternative options before EPA decided to delay promulgation from 2013 to 2014. Because the rule is being promulgated during the first half of 2014, EPA concluded that it would be reasonable to continue using 2013 as the assumed promulgation year for the regulatory analysis. EPA expects the differences in the estimated costs and benefits of the rule due to this slight imprecision to be minimal.

[116] For this analysis, EPA assumed that the last year of technology installation for all regulated facilities under any of the regulatory options—i.e., 2030—is also the first year of steady-state compliance with regulatory requirements.

[117] Because EPA was unable to identify those facilities for which entrainment control technology would be established as BTA standards on a site-specific basis, the Agency did not analyze technology costs associated with these site-specific requirements. Consequently, the cost and economic analyses conducted in support of today's rule assume that under the existing unit provision of the final rule and Proposal Option 4, Electric Generators and Manufacturers install IM technology only. These analyses also assume that under Proposal Option 2, Electric Generators with DIF exceeding 125 mgd install only cooling towers and all other Electric Generators install only IM technologies. Under Proposal Option 2, a small number of Manufacturers are assigned both IM and entrainment control technologies because of engineering issues associated with maintaining separation of contact and non-contact cooling water in some manufacturing operations. Although EPA did not estimate technology costs for facilities for which entrainment technology is established as BTA on a site-specific basis, EPA did include the costs for data collection and studies that facilities will need to perform in order to provide information to Directors to make these site-specific determinations. EPA included these costs in the administrative costs that are estimated for the final rule and other options considered.

[118] Calculated by dividing direct compliance costs for each type of facility by the total of 544 electric generators subject to today's rule on the basis of facility count-based weights (see EA Appendix H).

[119] Calculated using the total of 521 manufacturers subject to today's rule on the basis of technical weights (see EA Appendix H).

Federal government for Proposal Option 2, regardless of the discount rate used.

EXHIBIT IX–4—TOTAL ANNUALIZED SOCIAL COSTS—EXISTING UNITS AT EXISTING FACILITIES

[in millions, 2011 dollars] [a]

	Proposal option 4	Final rule	Proposal option 2
Using 3 percent discount rate			
Direct Compliance Costs:			
Electric Generators	$202.9	$203.7	$3,413.3
Manufacturers	47.8	67.7	229.2
Total Direct Compliance Cost	250.7	271.4	3,642.5
State and Federal Administrative Costs	1.0	1.0	0.7
Total Social Costs	251.8	272.4	3,643.2
Using 7 percent discount rate			
Direct Compliance Cost:			
Electric Generators	219.2	220.0	3,339.3
Manufacturers	51.9	74.2	243.0
Total Direct Compliance Cost	271.1	294.3	3,582.3
State and Federal Administrative Costs	1.0	1.0	0.7
Total Social Costs	272.1	295.3	3,583.0

[a] Cost estimates exclude costs associated with baseline closure facilities.

EPA also estimated the cost for installing closed-cycle recirculating systems at new units at existing electric generators, to reflect the costs of today's rule. As shown in Exhibit IX–5, EPA estimated that the new unit provision of the final rule will result in an annualized cost of $2.5 million and $2.0 million using 3 percent and 7 percent discount rates, respectively, including compliance costs to facilities and administrative costs to States and Federal government.

The Agency estimated that at a 3 percent discount rate, the total social cost of the final rule, including the existing and new unit provisions, will be $275 million. At a 7 percent discount rate, this cost is $297 million.

EXHIBIT IX–5—ANNUALIZED TOTAL SOCIAL COST OF THE FINAL RULE—EXISTING AND NEW UNITS AT EXISTING FACILITIES

[In millions, 2011 dollars] [a b]

	3% Discount rate	7% Discount rate
New Units	$2.5	$2.0
Existing Units	272.4	295.3
Existing and New Units	274.9	297.3

[a] Cost estimates exclude costs associated with baseline closure facilities.
[b] Values may not add due to rounding.

D. Economic Impacts

EPA used several analytic approaches to assess the economic impact of today's rule and the other options considered, on electric generators and manufacturers. EPA conducted separate analyses for electric generators and manufacturers using different methodologies for each regulated facilities segment. The following sections summarize the methodologies EPA used to conduct the economic impact analyses and the findings of these analyses. EPA conducted the economic impact analyses discussed in this section for existing facilities; the Agency used compliance cost estimates from the EPA engineering analysis (see TDD Section X.B).

1. Electric Generators

For the electric generators segment, EPA assessed the economic impact of the existing unit provision of the final rule and other options it considered in three ways: (1) The financial burden associated with a particular regulatory option on facilities and entities that own them, (2) how potential changes in the price of electricity would affect electricity consumers, in general, and residential households, in particular, and (3) broader economic impacts on the electricity market, taking into account the interconnectedness of regional and national electricity markets. In preparing the first two sets of analyses, EPA developed and used sample weights to extrapolate impacts assessed initially at the level of sample of facilities, to the full population of facilities subject to the final rule. For information on how EPA developed and used sample weights, see the EA, Appendix H.

In addition, EPA assessed the impact of the new unit provision of the final rule on decisions of existing facilities to construct stand-alone new units that would be subject to the new unit provision. EPA made this assessment in two ways: (1) On the basis of comparison, on a per MW basis, of compliance costs for new units to the overall cost of building and operating generating units and (2) as is the case with the existing unit provision, in the context of regional and national electricity markets, taking into account their interconnectedness.

a. Cost-to-Revenue Analysis for Regulated Facilities and Their Parent Entities—Existing Unit Provision of the Final Rule

EPA assessed the cost to regulated facilities and their parent entities on the basis of a cost-to-revenue analysis. For each analysis level (facility and parent entity), the Agency assumed, for analytic convenience and as a worst-case scenario, that none of the compliance costs would be passed on to consumers through electricity rate increases and, instead, would be absorbed by regulated facilities and their parent entities.[120] EPA developed

[120] As discussed in EA Chapter 2A: Industry Profiles, the majority of regulated electric generators operate in States with regulated electricity markets. EPA estimates that facilities located in these States may be able to recover compliance cost-based increases in their production costs through increased electricity prices. This depends on the business operation model of the facility owner(s), the ownership and operating structure of the facility itself, and the role of market mechanisms used to

Continued

this analysis for 544 electric generators.[121]

i. Cost-to-Revenue Analysis for Regulated Facilities

To provide insight into the potential significance of the compliance costs to regulated facilities, EPA calculated the ratio of annualized after-tax compliance costs to baseline annual facility-level revenues. In the cost-to-revenue comparisons, EPA used cost-to-revenue thresholds of 1 and 3 percent to categorize facilities according the potential economic impact of the rule. EPA concludes that facilities incurring costs below 1 percent of revenue will not face significant economic impacts, while facilities with costs of at least 1 percent but less than 3 percent of revenue have a chance of facing economic impacts, and facilities incurring costs of at least 3 percent of revenue have a higher probability of significant economic impacts. For a more detailed discussion of the methodology EPA used for the facility-level cost-to-revenue analysis, see EA Chapter 4.

Exhibit IX–6 presents a summary of the facility-level cost-to-revenue analysis results for the final rule and other options considered. EPA estimates that overall, under the final rule, 86 percent of regulated facilities will incur compliance costs of less than 1 percent of revenue. Under Proposal Option 4, 87 percent of regulated facilities would also incur costs of less than 1 percent of revenue. EPA estimates that Proposal Option 2 would result in 42 percent of facilities incurring costs exceeding 1 percent of revenue, and 43 percent incurring costs exceeding 3 percent of revenue.

EXHIBIT IX–6—FACILITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS FOR THE FINAL RULE AND OPTIONS CONSIDERED [a]

Option	Number of facilities with cost-to-revenue ratio					
	< 1%		≥ 1% and < 3%		≥ 3%	
	#	%	#	%	#	%
Proposal Option 4	475	87.4	35	6.5	31	5.7
Final Rule	470	86.5	40	7.4	31	5.7
Proposal Option 2	228	41.9	79	14.5	235	43.2

[a] Facility counts exclude baseline closures.
[b] EIA reports no revenue for 1 facility (2 on a weighted basis). Therefore, EPA conducted this analysis for 339 facilities (542 on a weighted basis). For more information on facility sample weights see EA Appendix H.

ii. Cost-to-Revenue Analysis for Regulated Parent Entities

EPA also assessed the economic impact using the cost-to-revenue metric at the level of the parent entity. This analysis, which focuses on domestic parent entities with the largest ownership share in the facility, provides insight on the impact of compliance requirements on those entities that own more than one regulated facility. The analysis helps to answer the question of whether owning multiple facilities that are required to comply with today's rule causes financial stress at the entity level. For each identified parent entity, EPA aggregated facility-level, annualized, after-tax compliance costs to the level of the parent entity and compared these entity-level costs to entity-level revenue.

Similarly to the facility-level analysis, EPA used cost-to-revenue thresholds of 1 and 3 percent to categorize facilities according the potential economic impact of the rule. EPA used two weighting approaches for this analysis: (1) Facility-level weights, but without entity-level weights and (2) entity-level weights, but without facility-level weights. These approaches, which are described in Appendix H of the EA, provide a range of estimates for the number of entities incurring compliance costs and the costs incurred by any entity that owns a regulated facility. (For a more detailed discussion of the methodology used for the entity-level cost-to-revenue analysis, see EA Chapter 4).

Exhibit IX–7 presents results for the entity-level analysis for the two weighting approaches. EPA estimates that between 123 and 159 entities own regulated facilities. Further, the Agency estimates that between 91 and 94 percent of parent entities will incur annualized costs of less than 1 percent of revenues under the final rule. This finding also holds under the two other options EPA considered, with between 91 and 94 percent of entities incurring costs of less than 1 percent of revenue under Proposal Option 4 and between 70 and 78 percent under Proposal Option 2.

EXHIBIT IX–7—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS [b]

Parent entity type	Total number of entities	Number of entities with cost-to-revenue ratio of							
		< 1%		≥ 1% and < 3%		≥ 3%		Unknown [a]	
		#	%	#	%	#	%	#	%
Using Facility-Level Weights:									
Proposal Option 4	123	112	91.1	3	2.4	0	0.0	8	6.5
Final Rule	123	112	91.1	3	2.4	0	0.0	8	6.5
Proposal Option 2	123	86	69.9	17	13.8	12	9.8	8	6.5
Using Entity-Level Weights:									
Proposal Option 4	159	150	94.2	0	0.0	0	0.0	9	5.8

sell electricity. In contrast, in States where electric power generation has been deregulated, cost recovery is less certain. While facilities operating within deregulated electricity markets may be able to recover some of their additional production costs through increased revenue, EPA cannot determine the extent of cost recovery ability for each facility.

[121] EPA calculated this number as a weighted estimate using facility count-based weights. This number excludes facilities assumed either to have already retired their steam operations or expected to do so in the future.

EXHIBIT IX–7—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS [b]—Continued

Parent entity type	Total number of entities	Number of entities with cost-to-revenue ratio of							
		< 1%		≥ 1% and < 3%		≥ 3%		Unknown [a]	
		#	%	#	%	#	%	#	%
Final Rule	159	150	94.2	0	0.0	0	0.0	9	5.8
Proposal Option 2	159	124	78.1	18	11.6	7	4.4	9	5.8

[a] EPA was unable to determine revenues for 8 parent entities (9 weighted).
[b] This analysis assumes no cost pass-through to electricity consumers.

b. Potential Electricity Price Effects—Existing Unit Provision of the Final Rule

As an additional measure of economic impact, EPA conducted two assessments of the potential price effects on electricity of today's rule: (1) The annual increase in electricity costs per MWh (megawatt hour) of total electricity sales and (2) the potential annual increase in household electricity costs. For analytic convenience and as a worst-case scenario, these assessments assume that all compliance costs will be passed through on a pre-tax basis to consumers as increased electricity prices. This full cost pass-through assumption represents a ''worst-case'' impact scenario from the perspective of electricity consumers. Facilities that are merchant providers can pass along costs only to the degree that they are competitive with other generators in the dispatch process.[122] This assumption is the opposite of EPA's assumption in the facility- and entity-level analyses discussed above—that facilities will pass none of the compliance costs through to consumers in electricity rate increases. If facilities are able to pass through all costs, the impacts in the previous subsection would not occur. The two conditions (no cost pass-through and full cost pass-through) could not occur at the same time. Thus, the results of the electricity price-effects analyses discussed in this section, and of the facility- and entity-level analyses discussed in Section IX.D.a.1, should not be combined. EPA conducted this analysis for 544 electric generators.

i. Compliance Cost per Unit of Electricity Sales

EPA assessed the potential increase in electricity rates by NERC region based on the annual cost of the regulatory options per unit of electricity sold. The Agency used two data inputs: (1) Total pre-tax compliance cost by NERC region, and (2) estimated total electricity sales in the year 2020, to gauge the full effects of the rule. To calculate the total estimated annual cost in each NERC region, the Agency summed sample-weighted, pre-tax annualized compliance costs over regulated facilities by region. EPA then calculated the approximate average price impact per unit of electricity consumption by dividing total compliance costs by the reported total MWh of sales in each NERC region. (Details of this analysis are presented in the EA, Chapter 4.)

As reported in Exhibit IX–8, under the existing unit provision of the final rule, annualized compliance costs (in cents per kWh sales) range from nearly $0.00 in the WECC region to $0.040 in the HICC region. EPA reached the same findings for Proposal Option 4. Under Proposal Option 2, costs range from $0.00 in the WECC region to $0.351 in the HICC region. On average, across the United States, the final rule and Proposal Option 4 result in a cost of $0.009 per kWh, while Proposal Option 2 results in a higher cost of $0.155 per kWh.

EXHIBIT IX–8—COMPLIANCE COST PER UNIT OF ELECTRICITY SALES IN 2020 BY REGULATORY OPTION AND NERC REGION

[2011 ¢/KWh sales] [a b]

NERC region [c d]	Proposal option 4	Final rule	Proposal option 2
ASCC	0.000	0.000	0.000
FRCC	0.014	0.014	0.171
HICC	0.040	0.040	0.351
MRO	0.010	0.010	0.174
NPCC	0.008	0.008	0.126
RFC	0.011	0.011	0.200
SERC	0.013	0.013	0.219
SPP	0.009	0.009	0.078
TRE	0.008	0.008	0.206
WECC	0.000	0.000	0.000
United States	0.009	0.009	0.155

[a] This analysis assumes full pass-through of all compliance costs to electricity consumers.
[b] Cost values exclude baseline closures.
[c] ASCC—Alaska Systems Coordinating Council; FRCC—Florida Reliability Coordinating Council; HICC—Hawaii Coordinating Council; MRO—Midwest Reliability Organization; NPCC—Northeast Power Coordinating Council; RFC—ReliabilityFirst Corporation; SERC—Southeastern Electric Reliability Council; SPP—Southwest Power Pool; TRE—Texas Reliability Entity, and WECC—Western Energy Coordinating Council.
[d] No explicitly analyzed facilities are in the ASCC region. For more information on explicitly and implicitly analyzed regulated facilities, see EA Appendix H.

[122] As discussed earlier in Section X.D.b.1, even though individual regulated facilities may not be able to recover all of their compliance costs through increased revenues, the market-level effect may still be that consumers will see higher overall electricity prices because of changes in the cost structure of electricity supply and resulting changes in market-clearing prices in deregulated electricity markets.

ii. Cost to Households

As an additional measure of the potential electricity price effects associated with the final rule, EPA estimated the potential annual increase in electricity costs per household and by NERC region. EPA used total annualized pre-tax compliance cost per MWh of sales, as estimated for the electricity rate impact analysis discussed above and the quantity of residential electricity sales per household as reported in the 2011 EIA database. To calculate the potential annual cost impact per household, EPA multiplied the average cost per kWh by the average kWh per household estimated for each NERC region. (Chapter 4 of the EA presents details of this analysis.)

As presented in Exhibit IX–9, under the existing unit provision of the final rule, the average annual cost per residential household varies across NERC regions, ranging from $0.01 in WECC to $2.82 in HICC. EPA reached the same findings for Proposal Option 4. Under Proposal Option 2, the average annual cost per residential household also varies across NERC regions, ranging from $0.01 in WECC to $31.72 in SERC. EPA estimated that on average, for a typical U.S. household, the final rule will result in an annual cost of $1.03 in higher electricity rates per household. EPA estimates that this cost would be $1.03 per household under Proposal Option 4 and $17.23 per household under Proposal Option 2.

EXHIBIT IX–9—AVERAGE ANNUAL COST BURDEN PER RESIDENTIAL HOUSEHOLD IN 2020 FOR THE FINAL RULE AND OPTIONS CONSIDERED, AND BY NERC REGION

[2011 dollars] [a] [b]

NERC region [c] [d]	Proposal option 4	Final rule	Proposal option 2
ASCC	$0.00	$0.00	$0.00
FRCC	1.91	1.91	23.15
HICC	2.82	2.82	24.61
MRO	0.99	1.02	18.10
NPCC	0.61	0.62	9.52
RFC	1.10	1.10	20.64
SERC	1.96	1.96	31.72
SPP	1.30	1.30	10.71
TRE	1.15	1.15	30.59
WECC	0.01	0.01	0.01
United States	1.03	1.03	17.23

[a] The rate impact analysis assumes full pass-through of all compliance costs to electricity consumers.
[b] Cost estimates exclude baseline closures.
[c] ASCC—Alaska Systems Coordinating Council; FRCC—Florida Reliability Coordinating Council; HICC—Hawaii Coordinating Council; MRO—Midwest Reliability Organization; NPCC—Northeast Power Coordinating Council; RFC—ReliabilityFirst Corporation; SERC—Southeastern Electric Reliability Council; SPP—Southwest Power Pool; TRE—Texas Reliability Entity, and WECC—Western Energy Coordinating Council.
[d] No explicitly analyzed facilities are in the ASCC region. For more information on explicitly and implicitly analyzed regulated facilities, see EA Appendix H.

As noted above, this analysis assumes that facilities will pass through to consumers all compliance costs through increased electricity rates. However, facilities and owner entities might not be able to recover all these costs through rate increases, thereby reducing the impact of today's rule on electricity consumers. At the same time, EPA recognizes that electric generators that operate as regulated public utilities will generally recover environmental compliance costs through rate increases to consumers.

c. Barrier-To-Development Analysis—New Unit Provision of the Final Rule

EPA assessed the impact of the new unit provision of the final rule on decisions of existing facilities to construct stand-alone new units that would be subject to the new unit provision. As discussed earlier in this preamble, under this provision, electric power generating units that meet the definition of a new unit will be required to achieve intake flow commensurate with closed-cycle cooling. The question of potential impact of this provision on the construction of new stand-alone units is important because new stand-alone units will generally operate with higher energy efficiency and lower environmental impact than older electric generating capacity, which the new units would tend to displace as a source of electric power generation. As such, EPA sought to ensure that the new unit provision would not impede construction of stand-alone new units.

For this analysis, EPA compared the compliance costs for new units to the overall cost of building and operating generating units, on a per MW basis. The purpose of this analysis is to determine whether the required addition of a closed-cycle recirculating system (CCRS) as part of a new unit would substantially increase the cost for the new stand-alone unit, and adversely affect the decision to construct the new stand-alone unit. This analysis showed that given the low cost of CCRS in relation to the cost of new capacity, the CCRS requirement will not pose a barrier to development of new stand-alone units.

EPA also assessed the costs associated with the new unit provision of the final rule as part of its electricity market analysis, as discussed in the following section (Section IX.D). This analysis tests the impact of the new unit requirements on electricity markets accounting for the expected number and timing of new unit installations, and provides additional insight on whether the costs of complying with the new unit provision of the final rule would affect future capacity additions. This analysis found no material effect of the final rule's new unit provision on the number and type of new units that would be constructed. This finding also supports EPA's conclusion that the new unit provision will not be a barrier to development of new capacity.

d. Impacts in the Context of Electricity Markets—Existing and New Unit Provisions of the Final Rule

In the analyses for the previous 316(b) regulations, including the proposed rule, EPA used the Integrated Planning Model (IPM®),[123] a comprehensive electricity market optimization model, to assess the economic impact of regulatory options within the context of

[123] Developed by ICF, Inc.

regional and national electricity markets. To assess facility and market-level effects of the final rule, EPA used an updated version of this same analytic system, the Integrated Planning Model Version 4.10 MATS (IPM V4.10_MATS) platform.

Use of a comprehensive, market analysis system is important in assessing the potential impact of the final rule because of the interdependence of electricity generating units in supplying power to the electric transmission grid. Increases in electricity production costs and potential reductions in electricity output at regulated facilities—due to the temporary shutdown of existing electric generating units during technology installation—can have a range of broader market impacts that extend beyond the effect on regulated facilities and their direct customers. In addition, the impact of compliance requirements on regulated facilities may be seen differently when the analysis considers the impact on those facilities in the context of the broader electricity market instead of looking at the impact on a stand-alone, single-facility basis.

The IPM V4.10_MATS platform provides outputs for the NERC regions that lie within the continental United States. This IPM platform does not analyze electric power operations in Alaska and Hawaii because these operations are not connected to the continental U.S. power grid. The IPM V4.10_MATS platform is based on an inventory of U.S. utility- and non-utility-owned boilers and generators that provide power to the integrated electric transmission grid, as recorded in the EIA 860 (2006) and EIA 767 (2005) databases.[124] IPM does not include electric power facilities that do not provide power to the U.S. power grid (e.g., some generating units at industrial facilities). The IPM V4.10_MATS universe consists of 14,920 generating units at 4,910 existing electric power facilities, including 520 of the 544 regulated electric power facilities subject to the final rule.[125]

This IPM V4.10_MATS platform embeds a baseline energy demand forecast from the Department of Energy's Annual Energy Outlook 2010 (AEO2010), with adjustments by EPA to account for the effect of certain voluntary energy efficiency programs. This platform also incorporates in its analytic baseline the expected compliance response to existing regulatory requirements for the following promulgated air regulations affecting the power sector: the final Mercury and Air Toxics Standards (MATS) rule; the final Cross-State Air Pollution Rule (CSAPR);[126] regulatory SO_2 emission rates arising from State Implementation Plans (SIP); Title IV of the Clean Air Act Amendments; NO_X SIP Call trading program; Clean Air Act Reasonable Available Control Technology requirements and Title IV unit specific rate limits for NO_X; the Regional Greenhouse Gas Initiative; Renewable Portfolio Standards; New Source Review Settlements; and several state-level regulations affecting emissions of SO_2, NO_X, and mercury that are already in place or expected to come into force by 2017.

In contrast to the screening-level analyses described earlier, which are static analyses and do not account for interdependence of electric generating units in supplying power to the electric transmission grid, IPM accounts for potential changes in the generation profile of individual electric power facilities and consequent changes in market-level generation costs, as a result of the final rule. The model is dynamic in that the analysis covers a multiple-decade period with information and decisions in any specific period depending on the analysis information and optimization results for the entire analysis period. The model is also forward-looking in that it uses forecasts of future conditions to make decisions for the present. Finally, in contrast to the screening-level analyses in which EPA assumed either no pass through of compliance costs (facility and entity cost-to-revenue analyses discussed in Section IX.D.a.1) or full cost pass-through (analysis of potential electricity price effects, Section IX.D.b.1), IPM assesses price and revenue effects from increased costs in competitive wholesale electricity markets, where some recovery of compliance costs through increased electricity prices is possible but not guaranteed.

In performing analyses based on the IPM V4.10_MATS platform, EPA used as its baseline a projection of electricity markets and facility operations without the final rule requirements (baseline case). As discussed above, this baseline accounts for compliance with the recently promulgated Federal air rules. EPA then overlaid this baseline with the estimated compliance costs and other operating effects—downtime for installation of IM technologies at existing units and auxiliary energy requirement to operate cooling towers at new units—for regulated facilities under the policy case.

As discussed in Appendix P of the EPA report, the IPM V4.10_MATS platform models the electric power market over the 43-year period from 2012 to 2054. Within this total analysis period, EPA looked at shorter IPM analysis periods (run-year windows)[127] to assess the effect of the final rule on national and regional electricity markets. Specifically, to assess the impact of the final rule during the period when regulated facilities temporarily suspend their operation to install compliance technologies—the short-term effects analysis or the downtime effects analysis—EPA used results reported for the 2020 IPM run year, which represent an 8-year window of 2017 through 2024.[128] The incurrence of downtime may lead to higher electricity generation costs overall, as generating units at regulated facilities are taken out of service to complete technology installation and other generating units, presumably with higher production costs, are dispatched to meet electricity demand. Because of the potential resulting increase in electricity generation costs, it is

[124] In some instances, facility information has been updated to reflect known material changes in a facility's generating capacity since 2006.

[125] Facilities excluded from the IPM analysis include three facilities in Hawaii and one facility in Alaska (i.e., areas that are outside the geographic scope of the model), four on-site facilities that are not connected to the integrated electric transmission grid, four facilities excluded from the IPM baseline as the result of custom adjustments made by ICF, and 12 facilities that did not respond to the 316(b) survey.

[126] EPA's Cross-State Air Pollution Rule (CSAPR) was promulgated to replace EPA's Clean Air Interstate Rule (CAIR), which had been remanded to EPA in 2008. However, on December 30, 2011, the U.S. Court of Appeals for the D.C. Circuit stayed CSAPR pending judicial review and left CAIR in place. On August 21, 2012 the Court issued an opinion vacating CSAPR and again leaving CAIR in place pending development of a valid replacement. On March 29, 2013, the United States filed a petition asking the Supreme Court to review the D.C. Circuit's opinion. Nevertheless, as explained above, CAIR remains in effect at this time. In light of the continuing uncertainty on CAIR and CSAPR, EPA determined it would not be appropriate or possible at this time to adjust emission projections on the basis of speculative alternative emission reduction requirements in 2020. EPA expects that the decision vacating CSAPR and leaving CAIR in place has minimal effect on the results of the analysis conducted in support of the final rule.

[127] Due to the highly data- and calculation-intensive computational procedures required for the IPM dynamic optimization algorithm, IPM is run only for a limited number of years. Run years are selected based on analytical requirements and the necessity to maintain a balanced choice of run years throughout the modeled time horizon. Each run year represents adjacent years in addition to the run year itself.

[128] As discussed earlier in this document, for the cost and economic impact analyses, EPA assumed that electric generators will install IM technologies during the 5-year window of 2018 through 2022. Because this technology-installation window falls within the time period captured by the 2020 run year (i.e., 2017 through 2024), EPA judges that 2020 is an appropriate year to capture the effects of technology-installation downtime.

important to examine market-level effects during the period in which downtime would occur.

To assess the longer term effect of the final rule on electricity markets during the period after compliance technology is installed at all regulated facilities—the steady-state post-compliance period—EPA analyzed results reported for the IPM 2030 run year, which represents a 10-year window of 2025 through 2034.[129] Effects that may occur during this steady-state period include increased electricity production costs at regulated facilities and potential permanent losses in generating capacity from early retirement (closure) of generating units. Both effects may lead to higher overall electricity generation costs through not only the increased production cost in regulated facilities, but also through dispatch of higher production cost units to offset capacity losses, reflecting the general upward shift in production costs.[130]

EPA measured the impacts of the final rule as the difference between key economic and operational impact metrics between the baseline case and the policy case. All analysis results presented below are representative of modeled market conditions in the years 2017–2034. While costs are in 2011 dollars, they are reflective of costs in the modeled years and are not discounted to the start of EPA's analysis period of 2013.[131] In contrast to the earlier statement that the cost and economic impact analysis findings presented in this preamble may be underestimates because EPA assumed that no facilities with impoundments will install compliance technology, the market-based analysis presented in this section reflects the opposite assumption. Namely, despite the final rule's treatment of impoundments, for purposes of this analysis, none of the facilities with impoundments are treated as having closed-cycle cooling in the baseline. As a result, to the extent that some of these facilities may qualify as having closed-cycle recirculating systems in the baseline, and thus would not need to install compliance technology, the costs and economic impacts reported in this section may be overestimated.

i. Analysis Results for the Year 2030—To Reflect Steady State, Post-Compliance Operations

For the steady-state analysis (2030), EPA considered impact metrics of interest at three levels of aggregation: (1) Impact on national and regional electricity markets, (2) impact on the group of 520 regulated facilities modeled in IPM, and (3) impact on individual 520 regulated facilities.

Impact on National and Regional Electricity Markets

For the assessment of market-level impacts, EPA considered six output metrics: (1) Incremental capacity retirements (closures); (2) changes in capacity retirements as a percent of total baseline capacity (3) changes in new capacity additions; (4) changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by net generation; (5) changes in total generation costs (fuel, variable O&M, fixed O&M, and capital); and (6) changes in wholesale electricity prices.

As shown in Exhibit IX–10, the final rule has small effects on the electricity market, on both the national and regional sub-market basis, in 2030. At the national level, the analysis shows a total net increase in retired capacity of approximately 1 GW, or less than 0.1 percent of the total baseline capacity in 2030 (capacity retirements are discussed in greater detail in the next section, Impact on Regulated Facilities as a Group). This 1 GW of net capacity loss reflects a combination of closures and avoided closures of generating units. ''Avoided closure'' means a generating unit that was projected to close in the baseline case but remains open in the policy case because of changes in the relative operating economics of generating capacity. In some instances an avoided closure can result in an avoided full facility closure. Overall, the final rule will lead to early retirement of approximately 4 GW of generating capacity and approximately 3 GW of avoided closure of capacity otherwise projected to retire by 2030, resulting in a net closure of approximately 1 GW of generating capacity. With only one exception, these retirements involve older, less efficient generating units with very low capacity utilization rates.

Five of the eight analyzed NERC regions record modest increases in retired capacity, with the largest increase, 0.8 percent of baseline retired capacity, projected to occur in TRE. One NERC region—SPP—avoids capacity closures, where 1.5 percent of capacity otherwise projected to retire in the baseline, becomes a more economically viable source of electricity in the policy case due to changes in the relative economics of electricity production across the full market, and thus avoids closure.[132] Consequently, the final rule is not expected to have a material ongoing effect on capacity availability and supply reliability at either the national or the NERC region level.

The 1 GW of retired capacity is replaced by new, more efficient, and less polluting capacity. Because the new capacity is more efficient and less costly to run than the retired capacity, it will run at a higher capacity utilization rate than the retired capacity; less new capacity is required to meet electricity demand than the retired capacity that it replaces. As shown in Exhibit IX–11, under the final rule, new capacity additions increase by 1 GW at the national level; this increase represents 0.5 percent of new baseline capacity and 0.1 percent of total baseline capacity (see Exhibit IX–10). This increase in new capacity is mostly comprised of combined cycle capacity followed by other non-steam capacity, with coal steam capacity additions remaining zero in both the baseline case and the policy case. Consequently, this analysis shows that the final rule is not likely to impede construction of new combined cycle and coal steam generating units.[133]

As reported in Exhibit IX–10, overall, the final rule has only a slight impact on electricity prices. For three out of eight NERC regions, electricity prices decline

[129] EPA expects this steady-state period to begin in the last year of the technology-installation window, i.e., 2022, and continue into the future. The 2022 analysis year is captured in the IPM 2020 run year, as opposed to the 2030 run year. However, because all analysis years represented by the 2030 run year (i.e., 2025–2034) fall outside the technology-installation window of 2018 through 2022, EPA judges that 2030 is an appropriate year to capture longer term, steady-state effects of the final rule.

[130] In seeking to minimize the cost of meeting electricity demand, IPM will tend to shift production away from regulated facilities that incur compliance costs, and will shift production to either non-regulated facilities, which incur no compliance costs, or to regulated facilities that incur relatively lower compliance costs. Any of these changes—whether a simple increase in production costs for previously dispatched units or changes in the profile of generating unit dispatch—mean increased total costs for electricity generation, compared to the pre-regulation baseline.

[131] In contrast, the social cost estimated in Section IX.C reflects the discounted value of compliance costs over the entire 51-year analysis period, as of 2013. Additionally, screening-level analyses presented in earlier sections are static analyses and do not account for interdependence of electric generating units in supplying power to the electric transmission grid. In contrast, IPM accounts for potential changes in the generation profile of steam electric and other units and consequent changes in market-level generation costs, as the electric power market responds to higher generation costs for steam electric units due to the final rule.

[132] Avoided closures may occur among facilities that incur no compliance costs under the final rule or for which compliance costs are low relative to the costs estimated for other regulated facilities.

[133] As described earlier in this preamble, under the new unit provision of the final rule, new units as defined at 125.92 include, stand-alone fossil fuel and combined cycle units. As described in Chapter 6 of the EA, the IPM analysis accounts only for compliance costs associated with new units. Further, EPA assigned these costs only to coal steam and combined cycle capacity.

slightly—by no more than $0.05 per MWh (0.1 percent) in TRE. Electricity prices increase in the remaining five NERC regions, with the largest increase, $0.29 per MWh (0.4 percent), occurring in NPCC. These very small estimated changes in electricity prices are essentially within the analytic ''noise'' of the electricity market modeling system.

At the national level, total generation costs increase by 0.3 percent of the baseline value—again, a very modest amount. Across regions, no NERC region records an increase in total costs exceeding 0.5 percent. The change in variable production costs ($/MWh)—a specific measure of the effect of the final rule on short-run electricity generation costs—is nearly zero with no NERC region recording a consequential change.

EXHIBIT IX–10—IMPACT OF THE FINAL RULE ON NATIONAL AND REGIONAL MARKETS, AT THE YEAR 2030

NERC region [a]	Total baseline capacity (GW)	Net changes in early retirements		Changes in variable costs		Changes in total costs		Changes in electricity price	
		GW	% of total baseline capacity	$2011/MWh	% of baseline	Mill 2011$	% of baseline	$2011/MWh	% of baseline
FRCC	68	0	0.30	−$0.03	−0.10	$51	0.30	−0.01	0.00
MRO	76	0	0.00	0.01	0.10	62	0.40	0.21	0.30
NPCC	73	0	0.50	0.00	0.00	28	0.20	0.29	0.40
RFC	237	0	0.10	0.01	0.00	157	0.30	0.15	0.20
SERC	274	0	0.10	0.02	0.10	182	0.30	0.08	0.10
SPP	59	−1	−1.50	0.02	0.10	31	0.30	−0.01	0.00
TRE	98	1	0.80	−0.01	0.00	48	0.30	−0.05	−0.10
WECC	220	0	0.00	0.00	0.00	9	0.00	0.03	0.00
Total	1,106	1	0.10	0.00	0.00	568	0.30	.....	N/A

[a] FRCC (Florida Reliability Coordinating Council), MRO (Midwest Reliability Organization), NPCC (Northeast Power Coordination Council), RFC (ReliabilityFirst Corporation), SERC (Southeastern Electricity Reliability Council), SPP (Southwest Power Pool), TRE (Texas Reliability Entity), and WECC (Western Electricity Coordinating Council).

EXHIBIT IX–11—IMPACT OF THE FINAL RULE ON NEW CAPACITY (GW), AT THE YEAR 2030

Capacity type	Baseline value	Final rule		
		Value	Difference	% Change
Coal Steam	0	0	0	NA
Combined Cycle	75	76	1	0.8
Combustion Turbine	6	6	0	0.0
Hydro	0	0	0	NA
Nuclear	0	0	0	NA
O/G Steam	0	0	0	NA
Other Non-Steam [a]	25	25	0	0.1
Other Steam [b]	9	9	0	0.0
Total	114	115	1	0.5

[a] Other non-steam capacity includes wind, solar, pumped storage, and fuel cell.
[b] Other steam capacity includes biomass, geothermal, municipal solid waste, fossil waste, landfill gas, tires, and non-fossil waste.

Impact on Regulated Facilities as a Group

EPA used the same IPM V4.10_MATS analysis results for 2030 as those used to assess market-level impacts described above; however, this analysis considers the effect of the final rule only on regulated facilities modeled in IPM (i.e., 520 facilities). For this analysis, EPA considered four output metrics: (1) Incremental capacity closures; (2) changes in capacity closures as a percent of total baseline capacity; (3) changes in total generation; and (4) changes in variable production costs per MWh.

As shown in Exhibit IX–12, for the group of regulated facilities, the impact of the final rule is overall slightly greater than that observed over all generating units in the IPM universe (i.e., market-level analysis discussed in the preceding section). This difference is due to the fact that in the electricity market as a whole, impacts on regulated facilities, which become less competitive compared to facilities that do not incur compliance costs, are offset by changes in capacity and energy production at the other electric power facilities. Nevertheless, the impact on the group of regulated facilities remains small. For instance, while there is essentially no change in total available capacity for the overall electricity market at the national level, for the group of regulated facilities, total available capacity falls by only 0.4 percent (2 GW). At the regional level, five NERC regions incur loss in total capacity, with the largest percentage loss of 2.8 percent and the largest absolute loss of 0.9 GW occurring in the NPCC region.

The 2 GW of capacity loss at regulated facilities reflects a combination of closures and avoided closures of generating units in the universe of regulated facilities. Some unit closures result in full facility closures (i.e., all generating units at a facility close), while others result in only partial facility closures (i.e., some, but not all, generating units at a facility close). For avoided closures, a generating unit projected to close in the baseline case but remains open under the policy case,

in some instances resulting in an avoided full facility closure. Overall, 22 generating units close (4 GW) and 12 generating units avoid closure (2 GW) in the policy case, resulting in net closure of 10 generating units (approximately 2 GW) in Electricity Market Analysis—Final Rule analysis. The 22 generating unit closures reflect retirement of nine units at six full-closure facilities (2 GW) and retirement of 13 units at six partial-closure facilities (2 GW). With only one exception, these retirements involve older, less efficient generating units with very low capacity utilization rates.

At the national level, for the group of regulated facilities, total generation at regulated facilities declines by less than 2 GWh or approximately 0.1 percent of baseline generation in these facilities. The MRO and SERC regions record slight increases in generation essentially amounting to zero percent of baseline generation at regulated facilities in these regions, with the remaining five NERC regions recording a reduction in electricity generation of no more than 0.4 percent in FRCC.

Over all regulated facilities, there is essentially no change in variable production costs ($/MWh) at the national level, while at the NERC region level, the change does not exceed 0.2 percent for any of the regions. These findings of very small effects confirm EPA's assessment that the assessed capacity closures among regulated facilities are of little economic consequence at both the national and regional levels.

EXHIBIT IX–12—IMPACT OF ELECTRICITY MARKET ANALYSIS OPTIONS ON THE GROUP OF REGULATED FACILITIES, AT THE YEAR 2030

NERC region [a]	Baseline capacity (MW)	Net change in early retirements/closures		Change in generation		Change in variable production cost	
		Capacity (MW)	% of baseline	GWh	% of baseline	$2011/MWh	% of baseline
FRCC	30,794	203	0.7	−527	−0.4	−0.08	−0.2
MRO	31,747	0	0.0	30	0.0	0.01	0.1
NPCC	30,977	855	2.8	−25	0.0	0.00	0.0
RFC	126,905	223	0.2	−619	−0.1	0.00	0.0
SERC	142,840	476	0.3	3	0.0	0.02	0.1
SPP	24,487	−530	−2.2	−411	−0.3	0.01	0.0
TRE	38,378	808	2.1	−163	−0.1	−0.02	−0.1
WECC	34,788	0	0.0	−8	0.0	0.00	0.0
Total	460,917	2,035	0.4	−1,721	−0.1	0.00	0.0

[a] FRCC (Florida Reliability Coordinating Council), MRO (Midwest Reliability Organization), NPCC (Northeast Power Coordination Council), RFC (ReliabilityFirst Corporation), SERC (Southeastern Electricity Reliability Council), SPP (Southwest Power Pool), TRE (Texas Reliability Entity), and WECC (Western Electricity Coordinating Council).

Impact on Individual Regulated Facilities

Results for the group of 520 regulated facilities as a whole may mask shifts in economic performance among individual facilities incurring compliance costs under the final rule. To assess potential facility-level effects, EPA analyzed facility-specific changes between the baseline case and the final rule for the following metrics: (1) Capacity utilization (defined as annual generation (in MWh) divided by [capacity (MW) times 8,760 hours]) (2) electricity generation, and (3) variable production costs per MWh.

Exhibit XI–13 presents the estimated number of regulated facilities with specific degrees of change in operations and financial performance. Under the final rule, this analysis shows that most facilities experience only slight effects—i.e., no change or less than a 1 percent reduction or 1 percent increase. Only six facilities are estimated to incur a reduction in capacity utilization and 13 facilities a reduction in generation of at least 1 percent, with only five facilities estimated to incur an increase in variable production costs per MWh of at least 1 percent. These facilities represent approximately 1 percent of 520 regulated facilities analyzed in IPM.

EXHIBIT IX–13—IMPACT OF THE ELECTRICITY MARKET ANALYSIS—FINAL RULE ON INDIVIDUAL REGULATED FACILITIES AT THE YEAR 2030

[Number of regulated facilities with indicated effect]

Economic measures	Reduction			No Change	Increase			N/A [b c]
	≥3%	≥1 and <3%	<1%		<1%	≥1 and <3%	≥3%	
Change in Capacity Utilization [a]	1	5	45	340	35	2	0	92
Change in Generation	9	4	37	345	29	2	2	92
Change in Variable Production Costs/MWh	2	1	70	86	242	4	1	114

[a] The change in capacity utilization is the difference between the capacity utilization percentages in the baseline and policy cases. For all other measures, the change is expressed as the percentage change between the baseline and post-compliance values.

[b] Facilities with status changes in either the baseline case or the policy case were excluded from these calculations. Specifically, there are 17 full baseline facility closures, 59 partial baseline facility closures, four avoided partial facility closures, six partial policy facility closures, and six partial policy facility closures.

[c] The change in variable production cost per MWh could not be developed for 22 facilities with zero generation in either the baseline case or the policy case.

ii. Analysis Results for 2020—To Capture the Effect of Technology-Installation Downtime

This section presents market-level results for the final rule for the 2020 IPM run year, which represents 2017 through 2024. As discussed above, this IPM run year captures the period when regulated facilities are expected to install compliance technologies under the final rule. Of particular importance as a potential impact, the additional downtime from installation of compliance technologies could manifest as increased electricity production costs resulting from the dispatch of higher-production-cost generating units during the period when units are taken offline to install compliance technologies. Because these effects are of most concern in terms of potential impact on national and regional electricity markets, this section presents results only for the overall electricity market and does not present results for the subset of regulated facilities.

As shown in Exhibit IX–14, the estimated effects of technology-installation downtime under the final rule are small. At the national level, total production costs increase by 0.4 percent. At the regional level, these costs increase in all NERC regions, with MRO and SPP recording the largest increase of 0.6 percent.

At the national level, variable production costs ($/MWh) increase by approximately 0.2 percent. While the effect on variable production costs varies across NERC regions, this effect is small overall, with the largest increase of less than 0.4 percent occurring in FRCC. While electricity prices increase in all NERC regions, the magnitude of that increase is generally small, ranging from $0.15 per MWh (0.3 percent) in MRO and WECC to $0.56 per MWh (0.9 percent) in FRCC.

EXHIBIT IX–14—SHORT-TERM EFFECT OF TECHNOLOGY INSTALLATION DOWNTIME ON NATIONAL ELECTRICITY MARKET UNDER THE FINAL RULE—2020

NERC Region [a]	Change in generation		Change in variable production cost		Change in total costs		Change in electricity price	
	2011$/MWh	% of baseline	2011$/MWh	% of baseline	Million 2011$	% of baseline	2011$/MWh	% of baseline
FRCC	−108	0.0	0.13	0.4	51	0.5	0.56	0.9
MRO	52	0.0	0.03	0.2	64	0.6	0.15	0.3
NPCC	−88	0.0	0.05	0.2	31	0.3	0.18	0.3
RFC	447	0.0	0.03	0.1	164	0.4	0.19	0.4
SERC	−369	0.0	0.04	0.1	185	0.4	0.27	0.6
SPP	−53	0.0	0.08	0.3	56	0.6	0.18	0.4
TRE	0	0.0	0.08	0.3	64	0.5	0.21	0.4
WECC	33	0.0	0.04	0.2	39	0.1	0.15	0.3
Total	−88	0.0	0.05	0.2	652	0.4		N/A

[a] FRCC (Florida Reliability Coordinating Council), MRO (Midwest Reliability Organization), NPCC (Northeast Power Coordination Council), RFC (ReliabilityFirst Corporation), SERC (Southeastern Electricity Reliability Council), SPP (Southwest Power Pool), TRE (Texas Reliability Entity), and WECC (Western Electricity Coordinating Council).

EPA recognizes any capacity outages estimated to occur in conjunction with installation of compliance technologies at existing units will require outage coordination by the system operator or other planning authority. Where possible, these outages would be scheduled in concurrence with normal scheduled maintenance outages. Permit authorities are provided flexibility to tailor compliance timelines. This flexibility will ensure that any adverse impact on local electric reliability as a result of this rule will be avoided. Facilities would receive workable construction schedules from permit writers that will allow schedule outages for installation without adversely affecting electric supply reliability.

2. Manufacturers

This section presents EPA's estimated economic impacts on manufacturers for the final rule and the other options EPA considered. These analyses assess the impact of regulatory requirements on the financial performance of regulated facilities (facility-level analysis) and the entities that own them (entity-level analysis). Similarly to the electric generators analysis, for the manufacturers facility-level and entity-level analyses, the Agency assumed that facilities would pass none of their compliance costs forward to customers as price increases, i.e., all compliance costs will be absorbed by regulated facilities and their parent entities. For details on the cost-pass-through (CPT) analysis for information on this assumption, see the EA, Appendix K. EPA developed and used sample weights to extrapolate impacts assessed initially at the level of a sample of facilities to the full population of regulated facilities. For information on the development and use of sample weights, see EA Appendix H.

a. Facility-Level Impact Analysis for Manufacturers

EPA conducted two separate facility-level analyses for manufacturers: (1) A stand-alone cost-to-revenue screener analysis and (2) a facility closure and financial stress short of closure test. For the cost-to revenue screener test, shown in Exhibit IX–15, EPA divided the after-tax, annualized compliance cost by facility-level revenue. Under the final rule, EPA found that of 500 Primary Manufacturing Industry facilities, 496 incur costs less than one percent of revenue, four incur costs between one and three percent, and none incur costs greater than 3 percent. For the nine Other Industries facilities, EPA estimated that eight facilities would incur costs less than one percent and one would incur costs between one and three percent of revenue. For Proposal Option 4, all Primary Manufacturing Industry facilities (500 facilities) and Other Industry facilities (nine facilities) incur costs less than one percent of revenue. Under Proposal Option 2, 491 Primary Manufacturing Industry facilities incur costs less than one percent and nine facilities incur costs between one and three percent, while seven Other Industry facilities incur costs less than one percent, one facility incurs costs between one and three percent, and one facility incurs costs greater than three percent.

EXHIBIT IX–15—FACILITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS

Option	Number of facilities with a cost-to-revenue ratio of [a]		
	<1%	≥1 and <3%	≥3%
Primary manufacturing industries			
Proposal Option 4	500	0	0
Final Rule	496	4	0
Proposal Option 2	491	9	0
Other industries			
Proposal Option 4	9	0	0
Final Rule	8	1	0
Proposal Option 2	7	1	1

[a] EPA conducted this analysis for 579 facilities in the Primary Manufacturing Industries and 10 facilities in the Other Industries. Note, these facility counts and analysis exclude facilities identified as baseline closures in the severe impact analysis, which is described below.

For the second analysis, EPA assessed how compliance costs would likely affect financial performance and condition of the 509 manufacturers [134] using two measures: (1) Facility closures (severe impacts) and associated losses in revenue and employment, and (2) financial stress short of closure (moderate impacts).

For the analysis of severe impacts, EPA identified a facility as a regulatory closure if it would have operated under baseline conditions but would not be financially viable under the new regulatory requirements and the costs of the final rule leading to that finding exceeded a threshold of 0.1 percent of revenue. Specifically, the Agency examined the facility's going-concern value before and after meeting regulatory requirements. EPA used a discounted cash flow framework in which after-tax cash flow is discounted at an estimated cost of capital to calculate the going concern value of the facility.[135] In conjunction with the discounted cash flow analysis, EPA tested whether annualized costs exceeded 0.1 percent of revenue by dividing the after-tax, annualized total compliance cost by facility-level revenue. If this analysis found that the facility's business value would become negative as a result of estimated compliance costs *and* the annualized cost of compliance exceeded 0.1 percent of revenue, EPA classified the facility as a regulatory closure.

For facilities estimated not to close under the severe-impact test, EPA conducted a moderate-impact test to assess whether any would experience financial stress short of closure as the result of regulatory requirements (e.g., higher costs of capital borrowing). EPA used two financial performance measures to test for occurrence of financial stress: (1) Interest coverage ratio and (2) pre-tax return on assets. The Agency compared these measures before and after compliance with regulatory requirements against industry-specific performance thresholds for the two financial measures. If both measures for a facility exceeded the threshold in the baseline, and at least one measure fell below the threshold in the post-compliance case, EPA counted this as a moderate impact based on the rule.

Exhibit IX–16 presents the results from the severe-impact and moderate-impact analyses. EPA estimated that no facilities would be at risk of closure as a result of the final rule and that 12 facilities could experience financial stress short of closure. For Proposal Option 4, EPA also estimated no closures, while moderate impacts are significantly lower, estimated at two facilities. Under Proposal Option 2, EPA estimated that one facility would be at risk of closure, while the moderate impact finding is the same as for the final rule: 12 facilities. Again, this analysis is conducted assuming that all the costs are borne by the facility and cannot be passed along, an assumption that is highly unlikely to be true, as many of these facilities are in industries where there is some market power and barriers to entry. Thus, these tests present worst case scenario results.

EXHIBIT IX–16—FACILITY IMPACTS AND COMPLIANCE COSTS FOR MANUFACTURERS [d]

	Proposed option 4	Final rule	Proposed option 2 [c]
Primary manufacturing industries [a]			
Number of Facilities Operating in Baseline	500	500	500
Number of Closures (Severe Impacts)	0	0	1
Percentage of Facilities Closing	0%	0%	0%
Number of Facilities with Moderate Impacts	2	12	12
Percentage of Facilities with Moderate Impacts	1%	3%	3%
Other industries [b]			
Number of Facilities Operating in Baseline	9	9	9
Number of Closures (Severe Impacts)	0	0	0

[134] This is a sample-weighted estimate of the number of manufacturers, calculated using economic weights. This number excludes 70 facilities estimated to be at substantial risk of financial failure regardless of any additional financial burden that might result from the final rule or other options considered in development of this rule. For details see EA Appendix H.

[135] This after-tax cash flow analysis conducted for manufacturers is similar in concept to the cash flow analysis conducted for electric generators through the IPM analysis.

EXHIBIT IX–16—FACILITY IMPACTS AND COMPLIANCE COSTS FOR MANUFACTURERS [d]—Continued

	Proposed option 4	Final rule	Proposed option 2 [c]
Percentage of Facilities Closing	0%	0%	0%
Number of Facilities with Moderate Impacts	0	0	0
Percentage of Facilities with Moderate Impacts	0%	0%	0%

[a] Primary Manufacturing Industries include facilities in the Aluminum, Chemicals and Allied Products, Food and Kindred Products, Paper and Allied Products, Petroleum Refining, and Steel industries.
[b] Other Industries include cooling water-dependent facilities in industries whose principal operations lie in businesses other than the electric power industry or the Primary Manufacturing Industries.
[c] Under Proposal Option 2, the percentage of facilities closing is 0.3 percent.
[d] The analysis assumes no cost pass through.

b. Entity-Level Impact Analysis

EPA also examined the impact of regulatory requirements on entities that own regulated manufacturers facilities. An entity that owns multiple facilities could be adversely affected because of the cumulative burden of regulatory requirements the facilities face. For this analysis, a parent entity is the domestic parent entity with the largest ownership share in a regulated facility. For each identified parent entity, EPA aggregated facility-level, annualized, after-tax compliance costs to the level of the parent entity and compared these entity-level costs to entity-level revenue. Similarly to electric generators, EPA used cost-to-revenue thresholds of 1 and 3 percent as thresholds for categorizing levels of impacts.

EPA considered two cases, based on two sets of entity-level. These cases, which are described in the EA, Appendix H, provide a range of estimates for the number of entities incurring compliance costs and the costs incurred by any entity owning a regulated facility. EPA conducted this analysis for 509 facilities in the primary manufacturing industries and 12 facilities in other industries.[136] For information on the methodology used for the entity-level cost-to-revenue analysis, see the EA, Chapter 5.

Exhibit IX–17 presents the results from the entity-level analysis for these two cases. EPA estimated that between 120 and 337 entities own 521 regulated facilities. Under the final rule, between 90 and 95 percent of all entities are estimated to incur compliance costs of less than 1 percent of revenue. This is true also for Proposal Option 2. Under Proposal Option 4, more entities are expected to incur compliance costs of less than 1 percent of revenue (between 94 and 96 percent of all entities).

EXHIBIT IX–17—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS

Option	Not analyzed due to lack of revenue information		Number of entities with a cost-to-revenue ratio of					
			< 1%		≥ 1% and < 3%		≥ 3%	
	#	%	#	%	#	%	#	%
Case 1: Lower bound estimate of number of entities that own regulated facilities; upper bound estimate of total compliance costs that an entity may incur [b]								
Proposal Option 4	5	4	113	94	2	2	0	0
Final Rule	5	4	108	90	6	5	1	1
Proposal Option 2	5	4	108	90	6	5	1	1
Case 2: Upper bound estimate of number of entities that own regulated facilities; lower bound estimate of total compliance costs that an entity may incur [c]								
Proposal Option 4	12	4	324	96	1	[a] 0	0	0
Final Rule	12	4	319	95	6	2	0	0
Proposal Option 2	12	4	319	95	6	2	0	0

[a] The percentage of entities with impacts greater than or equal to 1 percent and less than 3 percent is less than 0.5 percent.
[b] The total number of entities under Case 1 is 120.
[c] The total number of entities under Case 2 is 337.

E. Employment Effects

To study employment effects of this rule, EPA considered the potential effects of the final rule, focusing on the impacts of meeting compliance requirements in the directly regulated industry sectors: The Electric Power Industry, and selected Primary Manufacturing Industries, including Aluminum, Chemicals and Allied Products, Food and Kindred Products, Paper and Allied Products, Petroleum Refining, and Steel Manufacturing.

When the economy is at full employment, an environmental regulation is unlikely to have much impact on net overall U.S. employment; instead, labor would primarily be shifted from one sector to another. These shifts in employment impose an opportunity cost on society, approximated by the wages of the employees, as regulation diverts workers from other activities in the economy. In this situation, any effects on net employment are likely to be transitory as workers change jobs (e.g., some workers may need to be retrained or require time to search for new jobs,

[136] This is a sample-weighted estimate of the number of manufacturer facilities, calculated using technical weights. This number excludes 67 facilities estimated to be at substantial risk of closure regardless of any additional financial burden that might result from the regulatory options under consideration.

while shortages in some sectors or regions could bid up wages to attract workers).

On the other hand, if a regulation comes into effect during a period of high unemployment, a change in labor demand due to regulation may affect net overall U.S. employment because the labor market is not in equilibrium. Schmalansee and Stavins [137] point out that net positive employment effects are possible in the near term when the economy is at less than full employment due to the potential hiring of idle labor resources by the regulated sector to meet new requirements (e.g., to install new equipment) and new economic activity in sectors related to the regulated sector. In the longer run, the net effect on employment is more difficult to predict and will depend on the way in which the related industries respond to the regulatory requirements. As Schmalansee and Stavins note, the magnitude of the effect on employment could vary over time, region, and sector, and positive effects on employment in some regions or sectors could be offset by negative effects in other regions or sectors. For this reason, they urge caution in reporting partial employment effects because it can ''paint an inaccurate picture of net employment impacts if not placed in the broader economic context.''

In that spirit, unlike the analysis for the proposed rule, for the final rule EPA is not estimating quantitative employment impacts and instead, including only a qualitative discussion. The methods used at proposal were not sufficiently robust, largely because they relied on an input-output analysis that assumed fixed production relationships and used historical data to estimate the labor and other inputs required for compliance with the rule. Since publication of the proposed rule, EPA has concluded that input-output analysis is inappropriate for assessing employment impacts of national-level regulations. Input-output models are static, do not include prices, and assume the supply of all inputs is inexhaustible. They do not model a wide variety of adjustments that are expected to occur over time, such as changes in production processes, technology or trade patterns.[138] After reviewing the public comments EPA received on the proposed rule, the Agency concludes that the commenters have not identified any specific improvements to the employment analysis of the proposed rule. Thus, today's final rule EA includes a qualitative discussion highlighting the variety of potential adjustments in the labor market that may follow the rulemaking.

To elaborate on the difficulty of deriving high quality estimates of how environmental regulations will impact net employment, the task requires consideration of labor demand in both the regulated and environmental protection sectors, as well as labor supply more generally. Economic theory predicts that the net effect of an environmental regulation on labor demand in regulated sectors could be positive or negative; the direction of the outcome depends on the magnitude of output and substitution effects, explained further in the EA. Peer-reviewed econometric studies that use a structural approach, applicable to overall net effects in the regulated sectors, indicate that such effects, whether positive or negative, have been small and have not affected employment in the national economy in a significant way (Berman and Bui 2001, Morgenstern, Pizer and Shih 2002). Effects on labor demand in the environmental protection sector seem likely to be positive.

In aggregate, the environmental protection sector is likely to experience a temporary increase in jobs created as more compliance technology systems are designed, manufactured, and installed attributable to the final rule. In addition, because of regional variation in consumption patterns and the presence of regulated facilities and supporting industries, short- and long-run employment effects likely will vary across the United States. It is possible that positive net employment effects will occur in the near term due to the hiring of idle labor resources by the regulated sectors to plan for and meet new technology control requirements rather than diverting workers from other productive employment. However, it is also possible that in the long run, as the economy returns to full employment, any changes in employment in the regulated sectors due to the final rule will be offset by employment changes in other sectors. These dynamics compound the uncertainty in estimating employment effects for a substantial number of years into the future.

Even if regulated facilities are able to reduce the impact of regulatory requirements by changing their production processes in the post-rule environment, production costs may still be higher compared to those before the rule. As a result, regulated facilities may seek to increase their product prices in response to the higher production costs. For example, attempts by electric generators to recover increases in electricity generation costs, however small, are likely to result in higher electricity rates. The impact of this increase will vary by region, customer group (e.g., industrial, commercial, transportation, and residential), and by industry, depending on the electricity-use intensity.[139] Further, the extent to which electric generators are able to pass their costs to consumers through higher electricity rates, will vary by region. Specifically, electric generators operating in regions where electricity prices remain regulated under the traditional cost-of-service rate regulation framework may be able to recover compliance cost-based increases in increased rates.[140] However, cost recovery is less certain for electric generators operating in States where electric power generation has been deregulated, and will depend on the competitive circumstances of specifically affected facilities.

Overall, the long-run changes in employment will likely depend on how the electric power industry, primary manufacturing industries, and other industries adjust in response to the new regulatory requirements, and on the upstream and downstream effects of those adjustments on the rest of the economy, as well as the overall state of the economy and labor markets. The long-run employment effects in the directly affected sectors will depend on a number of economic factors. These factors include changes in labor requirements to operate the infrastructure in general and compliance technology in particular at regulated facilities, the potential to change production processes to become less dependent on cooling water, availability of alternative technologies to meet compliance requirements, and changes in demand for the outputs of the directly affected sectors. Because

[137] Schmalansee, Richard, and Robert N. Stavins. ''A Guide to Economic and Policy Analysis of EPA's Transport Rule.'' White paper commissioned by Exelon Corporation, March 2011 (Docket EPA–HQ–OAR–2011–0135–0054).

[138] For a discussion of input-output models see Chapter 8 of the EPA Handbook on the Benefits, Costs, and Impacts of Land Cleanup and Reuse (2011).

[139] See the EA *Chapter 6: Electricity Market Analysis* for assessment of the impacts of increased production costs on wholesale electricity prices and *Chapter 4: Economic Impact Analysis—Electric Generators* for analyses of the impacts on retail rates by customer group.

[140] However, even for electric generators operating under traditional rate regulation, the recovery of cost increases through increased rates is not certain, and will depend on additional factors such as the facility ownership structure and operating model, approval of public utility commissions, and the importance and role of market mechanisms in dispatching production of electricity across generating units. See *Chapter 2A* of the EA for additional discussion.

these and many other interrelated factors include data and methodology limitations, it is difficult to fully assess the employment impacts of the final rule. However, based on the available evidence from several peer-reviewed econometric studies mentioned above that are applicable to net effects in the regulated sectors and that closed-cycle recirculating systems was rejected as national BTA for entrainment, EPA expects that employment impacts of today's rule are not likely to be substantial.

X. Benefits Analysis

A. Introduction

This section presents EPA's estimates of the national environmental benefits of the final existing facilities rule and other options considered by EPA. This section describes how EPA calculated values for those benefits it could monetize. EPA did not rely on the results of its stated preference survey in estimating the benefits of today's rule. It also presents descriptive information for those benefits for which EPA could not develop a monetary value. The benefits EPA assessed occur because of reductions in impingement and entrainment at cooling water intake structures affected by the rulemaking and changes in greenhouse gas emissions at regulated facilities. Impingement occurs where fish and other aquatic life are trapped on equipment as they enter the cooling water intake structure. Entrainment occurs where aquatic organisms, including eggs and larvae, are drawn into the cooling system, passed through the heat exchanger, and discharged back into the source waterbody. Impingement and entrainment kill or injure large numbers of aquatic organisms across all life stages. On the basis of entrainment data presented in facility studies, EPA assumes a mortality rate of 100 percent for entrained individuals. Mortality is then reduced on the basis of the efficiency of technology in place in reducing mortality rates, or by reducing levels of impingement and entrainment.[141] By reducing impingement mortality and entrainment, the final existing facilities rule is likely to increase the number of fish, shellfish, and other aquatic organisms in affected water bodies resulting in healthier aquatic environments. In turn, this healthier aquatic environment directly improves welfare for individuals using the affected aquatic resources, generating *use benefits* such as increases in the value of recreational and commercial fisheries or increases in property values. Reductions in impingement mortality and entrainment also improve welfare for individuals without use of the affected resources, generating *nonuse benefits,* such as improved ecosystem function and resource bequest values. Section D provides an overview of the types and sources of benefits EPA anticipated, how EPA estimated these benefits, and the level of benefits that the final rule and other options EPA considered for the rule would achieve.

EPA derived national benefit estimates for the final rule and other options considered from a series of regional studies representing a range of waterbody types and aquatic resources. Section B provides detail on the regional study design. Section C describes the impingement and entrainment effects and Section D presents the national benefits estimates.

The methodologies used to estimate benefits are largely built on those used to estimate benefits for the remanded Phase II and Phase III and the proposed existing facilities rules. In addition to updating these analyses, EPA more fully investigated the effects of impingement mortality and entrainment on T&E species, incorporated benefits from greenhouse gas reductions, and improved its estimation of nonuse benefits. The Benefits Analysis document for the final existing facilities rule (referred to as the BA) provides detailed descriptions of the new methodologies EPA used to analyze the benefits of regulatory options, and provides references to (i) Part A of the 2004 Regional Benefits Analysis for the Final Section 316(b) Phase II Rule, and (ii) Part A of the 2006 Regional Benefits Analysis Document for the Final Section 316(b) Phase III Existing Facilities Rule for analyses using similar methodologies.

The BA provides EPA's benefit estimates for the final rule and considered options. EPA relied on information collected in the 2000 section 316(b) industry surveys (the Industry Screener Questionnaire (SQ) and the Detailed Industry Questionnaire (DQ)) on cooling water systems and intake structures already in place to estimate the number of regulated facilities under regulatory options considered for the final existing facilities rule. For the analysis of regulated electric generators, EPA used information from 656 regulated electric generating facilities that responded to the section 316(b) industry surveys on cooling water systems and intake structures already in place. Because the DQs were sent to a sample of the manufacturing industries that use cooling water, the respondents were assigned sample weights designed to represent other facilities in other manufacturing industries that were not covered in the survey. All regulated facilities have a DIF of at least 2 mgd. EPA estimated regional benefits from the sample of facilities for which EPA has sufficient DQ information to estimate the environmental impacts of regulatory options. The environmental impacts from the set of explicitly analyzed facilities were then extrapolated to the universe of facilities in a region using statistical weights developed for this analysis. National benefits are estimated as the sum of the regional benefits.

As described above at Section IX, the findings presented in this section assume that all facilities with impoundments will qualify as having closed-cycle recirculating systems in the baseline. For purposes of this analysis, EPA did not estimate IM&E reductions for these facilities under the final rule and other options considered; however, these facilities remain subject to today's rule and are assigned administrative costs. To the extent that some of these facilities do not qualify as having closed-cycle cycle recirculating systems in the baseline, the monetized benefits reported in this section may be underestimated. EPA notes that the vast majority of these facilities occur in the Inland benefits region. Any underestimation in monetized benefits due to the treatment of facilities with impoundments is likely to be minor because commercial fishing benefits and nonuse benefits are not estimated for the Inland region.

B. Regional Study Design

EPA evaluated the benefits of today's rule in seven study regions.[142] Regions were defined on the basis of ecological similarities within regions (e.g., freshwater versus marine, similar communities of aquatic species), and on characteristics of commercial and recreational fishing activities. The seven study regions are: California,[143] North Atlantic, Mid Atlantic, South Atlantic, Gulf of Mexico, Great Lakes, and Inland. The five coastal regions EPA identified (California, North Atlantic, Mid-Atlantic, South Atlantic, and Gulf of Mexico) correspond to those of the

[141] See the discussion in Section III on entrainment mortality data and assumptions.

[142] Benefits associated with changes in greenhouse gas emissions were estimated for the nation as whole.

[143] The California region includes facilities in State of California and four facilities in Hawaii. No coastal facilities are in Oregon, and one facility in Washington is classified as a baseline closure.

National Oceanic and Atmospheric Administration's National Marine Fisheries Service. The Great Lakes region includes Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border) as defined in 33 U.S.C. 1268, Sec. 118(a)(3)(b). The Inland region includes all remaining facilities that withdraw water from freshwater lakes, rivers, and reservoirs, including inland facilities in coastal states. Notably, of the 435 facilities that are on freshwater streams or rivers, 30 percent (132) have average actual intake flow that is greater than 5 percent of the mean annual flow of the source waters, which is a significant amount of the source water flow. During periods of low river flow, or during periods of higher than average withdrawals of cooling water, the proportionate withdrawal of source waters could be much higher. Thus, the potential for adverse environmental impacts could increase dramatically during these periods. The number and total operational intake flow of all 316(b) facilities by study region are presented in Exhibit X–1.

EXHIBIT X–1—NUMBER OF SURVEYED FACILITIES AND TOTAL MEAN OPERATIONAL FLOW, BY REGION

Region	Number of surveyed facilities [a]	Flow (billions of gallons per day)		
		Non-recirculating facilities [b]	Recirculating facilities	Total flow
California [c]	21	10.65	0.00	10.65
Great Lakes	50	16.24	0.24	16.47
Inland [d]	566	107.56	18.06	125.62
Mid-Atlantic	46	24.69	0.07	24.76
Gulf of Mexico	22	10.14	0.05	10.18
North Atlantic	21	5.93	0.00	5.93
South Atlantic	12	5.91	0.05	5.96
All Regions	738	181.12	18.46	199.58

[a] This table presents unweighted facility counts and flow for surveyed facilities (excluding baseline closures). The regional study design for the benefits analysis uses weights based on flow rather than facility counts. EPA did not develop weighted facility counts by benefits region. The "All Regions" total of 738 surveyed facilities includes 532 electric generating facilities and 206 manufacturing facilities, excluding baseline closures. The total (weighted) estimated universe of facilities, excluding baseline closures, is 1,065 facilities.

[b] Recirculating facilities are facilities with closed-cycle cooling or impoundments that qualify as closed-cycle cooling. Non-recirculating facilities include facilities with CWIS classified as once-through.

[c] The California region includes four facilities in Hawaii. There are no coastal facilities in Oregon and the one coastal facility in Washington is classified as a baseline closure.

[d] A facility in Texas has intakes in both the Inland and Gulf of Mexico regions. It is included in the Inland region in the table to prevent the double counting of facilities.

EPA obtained estimates of regional impingement mortality and entrainment by extrapolating impingement mortality and entrainment observed at 98 facilities with impingement and entrainment studies (model facilities) to all regulated facilities in the same region. EPA used regional estimates to more accurately estimate impacts by accounting for differences in ecosystems, aquatic species, and characteristics of commercial and recreational fishing activities across regions. Extrapolation was conducted on the basis of AIF reported for the period 1996–1998 by facilities in response to EPA's Section 316(b) Detailed Questionnaire and Short Technical Questionnaire. Chapter 3 of the BA provides details of the extrapolation procedure. Because the goal of the analysis was to provide estimates of impingement mortality and entrainment at regional and national scales, EPA recognizes that these averages may not reflect the substantial variability at individual facilities. In spite of this variability, EPA determined that this extrapolation is a reasonable basis for developing estimates of regional- and national-level benefits for the purposes of the final existing facilities rule.

C. Physical Impacts of Impingement Mortality and Entrainment

EPA based the benefits analysis on facility-provided impingement mortality and entrainment monitoring data. Facility data consist of records of impinged and entrained organisms sampled at intake structures and include organisms of all ages and life stages. Sampling protocols were not standardized across facilities. Facility protocols differed in sampling methods and equipment used, the number of samples taken, sampling duration, and the unit of time and volume of intake flow used to express impingement mortality and entrainment. To standardize estimates across facilities, EPA converted sampling counts into annual impingement mortality and entrainment. Using standard fishery modeling techniques,[144] EPA constructed models that combined facility-derived impingement mortality and entrainment counts with life history data from the scientific literature to derive annual estimates of the following:

- Individuals—the number of individual organisms impinged and entrained by facility intakes. Under this metric, eggs, larvae, juvenile, and adult organisms are counted as equivalent individuals.

[144] Ricker, W.E. 1975. Computation and interpretation of biological statistics of fish populations. Fisheries Research Board of Canada, Bulletin 191; Hilborn, R. and C.J. Walters. 1992. Quantitative Fisheries Stock Assessment, Choice, Dynamics and Uncertainty. Chapman and Hall, London and New York; Quinn, T.J., II. and R.B. Deriso. 1999. Quantitative Fish Dynamics. Oxford University Press, Oxford and New York; Dixon, D.A. 1999. Catalog of Assessment Methods for Evaluating the Effects of Power Plant Operations on Aquatic Communities. Electric Power Research Institute (EPRI) Final Report. Report number TR–112013.

• A1Es (age-one equivalent losses)—the number of individual organisms of different ages impinged and entrained by facility intakes, standardized to equivalent numbers of 1-year-old fish. A conversion rate between all life history stages and age 1 is calculated using species-specific survival tables based on life history schedule and age-specific mortality rates. An individual younger than age 1 is a fraction of an age-one equivalent; an individual older than age 1 represents more than one age-one equivalent. EPA finds it appropriate to use the A1E measure because information in the record indicates that an overwhelming majority of eggs, larvae and juveniles do not survive into adulthood and the A1E calculations adjust for differences in survivorship based on species and age-specific mortality rates. EPA recognizes that using A1Es simplifies a complex ecological situation, because some of the smaller fish would provide an ecological benefit to other species as food even if they would not survive to adulthood. Recognizing this as one nonmonetized benefit in the analysis, using an A1E approach is the most reasonable approach available because to date, there is insufficient data to account for the extent to which organisms that do not survive to adulthood provide a benefit to other organisms which can be reliably monetized.

• Forgone fishery yield—pounds of commercial fish harvest and numbers of recreational fish and shellfish that are not harvested because of impingement mortality and entrainment. EPA used the Thompson-Bell equilibrium yield model [145] to convert impingement mortality and entrainment to forgone fishery yield, assuming that (1) impingement mortality and entrainment reduces the future yield of harvested adults, and (2) reductions in impingement mortality and entrainment rates will lead to an increase in harvested biomass. The general procedure involves multiplying age-specific harvest rates by age-specific weights to calculate an age-specific expected yield.

• Biomass production forgone—biomass that would have been produced had individuals not been impinged or entrained,[146] calculated for all species from species- and age-specific growth rates and survival probabilities. It refers to the mass of impinged and entrained organisms that would have served as valuable components of aquatic food webs, particularly as an important food supply to other aquatic species.

Estimates of forgone fishery yield include direct and indirect losses of impinged and entrained species that are harvested. Indirect losses represent the yield of harvested species lost because of reductions in prey availability according to a simple trophic transfer model (i.e., forage species).[147] Chapter 3 of the BA contains detailed methodology for these analyses.

Studies from individual facilities may underestimate or overestimate impingement mortality and entrainment rates at those facilities. For example, facility studies typically focus on a subset of fish species affected by impingement mortality and entrainment, resulting in other species being ignored. The number of individuals lost to impingement mortality and entrainment is then underestimated. Estimating the magnitude of this underestimate is not possible because of the low number of replicate studies. Moreover, studies often do not count early life stages of organisms that are more difficult to identify. In addition, many of the impingement mortality and entrainment studies used by the Agency were conducted more than 30 years ago, prior to the improvement of aquatic conditions that have resulted from implementation of the CWA as well as State and local laws and efforts. In locations where water quality was degraded at the time of impingement mortality and entrainment sampling relative to current conditions, the abundance and diversity of fish populations might have been depressed, resulting in low impingement mortality and entrainment estimates. Therefore, use of these data may underestimate the magnitude of current impingement mortality and entrainment. Alternatively, studies could have been conducted in locations where local fish populations are now lower than they were when the study occurred. Such a shift in fish populations might have occurred because of natural variability in populations, because of other anthropogenic effects (i.e., over-harvesting), or because of competition from invasive species. In such cases, the use of these data may overestimate the magnitude of current impingement mortality and entrainment.

EPA's use of linear methods for projecting losses to fish and shellfish in the waterbody may also overstate or understate impacts. Nevertheless, the data from facility studies are the best means to estimate the relative magnitude of impingement mortality and entrainment nationwide. Exhibit X–2 presents EPA's estimates of baseline annual impingement mortality and entrainment, and reductions in annual impingement mortality and entrainment estimated to occur under the final rule and other options considered. Impingement mortality and entrainment reductions under the final rule are less than the reductions under Proposal Option 2 and greater than reductions under Proposal Option 4. Unlike the analysis of Proposal Option 2, EPA did not model the entrainment reductions from cooling tower installation under the final rule and Proposal Option 4 because these would be based on site-specific determinations of BTA, which are not possible to predict with information EPA has today. EPA estimated a small amount of entrainment losses under the final rule and Proposal Option 4 due to the assumed installation of variable speed pumps at some facilities to achieve compliance via the low velocity compliance alternative.

[145] Ricker, W.E. 1975. Computation and interpretation of biological statistics of fish populations. Fisheries Research Board of Canada, Bulletin 191.

[146] Rago, P.J. 1984. Production forgone: An alternative method for assessing the consequences of fish entrainment and impingement losses at power plants and other water intakes. Ecological Modeling, 24(1–2): 79–111.

[147] Indirect losses account for about 10 percent of commercial and recreational harvest reductions at baseline.

EXHIBIT X–2—BASELINE ANNUAL IM&E AND ANNUAL REDUCTIONS IN IM&E FOR EXISTING UNITS AT ALL FACILITIES SUBJECT TO THE FINAL RULE

Loss mode [a]	Reduction in annual IM&E by regulatory option [b c]			Baseline annual IM&E
	Proposal option 4	Final rule—existing units	Proposal option 2	
Individuals (millions)				
IM	419.9	441.3	511.9	568.6
E	399.8	1,693.9	335,447.6	497,316.3
IM&E	819.7	2,135.2	335,959.4	497,884.8
Age-One Equivalents (millions)				
IM	612.8	647.5	748.2	824.2
E	1.4	4.5	889.3	1,106.7
IM&E	614.2	652.0	1,637.5	1,931.0
Forgone Fishery Yield (million lbs)				
IM	12.6	13.3	15.4	16.9
E	0.0	0.1	35.7	52.9
IM&E	12.6	13.4	51.1	69.8
Production Forgone (million lbs)				
IM	129.7	136.5	157.2	174.8
E	0.5	2.4	337.0	451.8
IM&E	130.3	138.9	494.2	626.6

[a] IM = impingement mortality; E = entrainment; IM&E = impingement mortality and entrainment.
[b] IM&E Effects by Option: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.
[c] The totals presented here do not include IM&E reductions associated with new units. Estimated IM&E reductions associated with the new unit provision of the final rule are presented in Exhibit X–4.

Exhibit X–3 presents EPA's estimates of annual impingement mortality and entrainment for final rule and other considered options by category of fish species. Estimates of annual forgone fishery yield include both direct losses of harvested species and indirect losses from reductions in prey fish species. Organisms convert (on average) only about 10 percent of the mass of food they consume into additional tissue mass. Thus, although essential to maintain ecosystem function, the vast majority of biomass moving through food webs does not reach higher trophic levels associated with commercial and recreational species and harvest. Instead, the biomass of prey species is metabolized and used for predator locomotion, reproduction, and tissue repair. Accordingly, the portion of impingement mortality and entrainment that are counted within the forgone harvest metric represent only a small percentage of all organisms experiencing impingement mortality and entrainment at cooling water intake structures. Neither forage species nor the unlanded portion of recreational and commercial species were assigned direct use values in this analysis, although losses in forage species did contribute to the overall losses in recreational and commercial species as noted above. Because the majority of annual impingement mortality and entrainment include unharvested recreational and commercial fish and forage fish, considering nonuse values in the final rule benefits analysis is particularly important. If nonuse values were not considered at all, only two to three percent of fish losses would be represented in monetized benefits.

EXHIBIT X–3—DISTRIBUTION OF ANNUAL BASELINE IM&E AND REDUCTIONS IN IM&E BY SPECIES CATEGORY, FOR INDIVIDUAL ORGANISMS AND AGE-1 EQUIVALENTS, AT EXISTING UNITS FOR THE FINAL RULE AND OPTIONS CONSIDERED

IM&E Metric [a]	Reduction in IM&E by regulatory option [b c]			Baseline IM&E
	Proposal option 4	Final rule—existing units	Proposal option 2	
Individuals (millions)				
All Species	819.7	2,135.2	335,959.4	497,884.8
Forage Species	607.9	1,423.6	224,323.1	325,069.1
Commercial & Recreational Species	211.8	711.5	111,636.3	172,815.8
Commercial & Recreational Harvest (millions of fish)	16.1	17.1	44.7	54.0
Lost Individuals with Direct Use Value (%)	1.97%	0.80%	0.01%	0.01%
Age-One Equivalents (millions)				
All Species	614.2	652.0	1,637.5	1,931.0

EXHIBIT X–3—DISTRIBUTION OF ANNUAL BASELINE IM&E AND REDUCTIONS IN IM&E BY SPECIES CATEGORY, FOR INDIVIDUAL ORGANISMS AND AGE-1 EQUIVALENTS, AT EXISTING UNITS FOR THE FINAL RULE AND OPTIONS CONSIDERED—Continued

IM&E Metric [a]	Reduction in IM&E by regulatory option [b c]			Baseline IM&E
	Proposal option 4	Final rule—existing units	Proposal option 2	
Forage Species	528.2	560.8	1,258.7	1,459.7
Commercial & Recreational Species	85.9	91.2	378.8	471.3
Commercial & Recreational Harvest (millions of fish)	16.1	17.1	44.7	54.0
A1E Losses with Direct Use Value (%)	2.63%	2.62%	2.73%	2.80%

[a] IM&E = impingement and entrainment; A1E= age-one equivalent;
[b] IM&E Effects by Option: Proposal Option 2 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.
[c] The totals presented here do not include IM&E reductions associated with new units. Estimated IM&E reductions associated with the new unit provision of the final rule are presented in Exhibit X–4.

In addition to the final rule and other options analyzed for existing units (Proposal Option 4 and Proposal Option 2), EPA analyzed requirements for new units at existing facilities. EPA's new unit provision in the final rule establishes entrainment requirements for all new stand-alone units at existing facilities. EPA could not directly apply the extrapolation methodology used for existing units because facility-specific information was not available for new units. Instead, EPA estimated impingement mortality and entrainment reductions on the basis of impingement mortality and entrainment reductions per million gallons per day from the analysis of existing units. The estimated reduction in impingement mortality and entrainment for the new unit requirement is summarized in Exhibit X–4.

EXHIBIT X–4—ANNUAL REDUCTIONS IN IM&E BY SPECIES CATEGORY FOR THE FINAL RULE FOR NEW UNITS

IM&E metric [a]	Reduction in IM&E [b]
Individuals (millions)	
All Species	867.2
Forage Species	566.1
Commercial and Recreational Species	301.1
Commercial and Recreational Harvest (millions of fish)	0.1
Lost Individuals with Direct Use Value (%)	0.01%
Age-One Equivalents (millions)	
All Species	2.3
Forage Species	1.7
Commercial and Recreational Species	0.7
Commercial and Recreational Harvest (millions of fish)	0.1
A1E Losses with Direct Use Value (%)	2.87%

[a] A1E = age-one equivalent; IM&E = impingement mortality and entrainment.
[b] Impingement mortality and entrainment reductions increase throughout the compliance period. The values presented here reflect the peak reductions achieved in 2059, the final year of the compliance period.
IM&E Effects: Entrainment requirements for all stand-alone or units.

D. National Benefits of the Final Rule and Options Considered

1. Overview

Economic benefits of the final rule and other options considered for regulated facilities can be categorized broadly into use and nonuse benefits of goods and services. Use values include benefits that pertain to the human use (direct or indirect) of affected fishery resources. Use values reflect the value of all current direct and indirect uses of a good or service. Direct use benefits can be further categorized according to whether affected goods and services are traded in the market (i.e. commercially captured fish are traded, recreational catch is not). Likewise, indirect use benefits can be linked to direct goods and services. For example, reductions in impingement mortality and entrainment of forage fish will enhance the biomass of species targeted for commercial (market) and recreational (nonmarket) uses. It could also affect property values.

Nonuse benefits are those benefits that are independent of any current or anticipated human use of a resource. Nonuse benefits reflect human values associated with existence and bequest motives. In other words, these values reflect the value the public places on something simply as a result of its existence or natural functioning. EPA estimated the economic benefits from national regulatory options using a range of valuation methods. Commercial fishery benefits were valued using market data. Recreational angling benefits were valued using a benefits transfer approach based on revealed and stated preference data. To estimate indirect use benefits from reduced impingement mortality and entrainment of forage species, EPA used a simple

trophic transfer model. This model translated changes in impingement mortality and entrainment of forage fish into changes in the harvest of commercial and recreational species. All benefits for fish saved under today's final rule are estimates on the basis of projected numbers of age-one equivalent fish, converted to harvestable age equivalents on a species-by-species basis for those commercial species analyzed.

EPA calculated the monetary value of use benefits of the final rule and other options considered for existing facilities using two discount rate values: 3 and 7 percent. All dollar values presented are in 2011 dollars. Because avoided fish deaths occur mainly in fish that are younger than harvestable age (eggs, larvae, and juveniles), the main benefits from avoided impingement mortality and entrainment would be realized typically 3 to 4 years after their avoided death. A detailed description of the approaches used to address this is in Appendix C of the BA.

Neither forage species nor the unlanded portion of recreational and commercial species were assigned direct use values in this analysis. Their potential value to the public is derived from several alternative sources: Their indirect use as both food and breeding population for those fish that are harvested; and nonuse value. The nonuse value includes individuals' WTP (willingness to pay) for the protection of fish based on a sense of altruism, stewardship, bequest, or vicarious consumption; and their support of ecosystem stability and function. To estimate a subset of nonuse benefits from reducing impingement mortality and entrainment of forage species and unlanded commercial and recreational species, EPA conducted a benefits transfer using a nonmarket valuation study of aquatic ecosystem improvements. This effort generated partial estimates of nonuse values for resource changes for a species that represents less than one percent of adverse environmental impacts.

EPA developed and fielded an original stated preference survey to estimate total WTP for improvements to fishery resources affected by impingement mortality and entrainment from regulated 316(b) facilities (75 FR 42438, July 21, 2010). Preliminary results of the stated preference survey were described in a Notice of Data Availability (77 FR 34927, June 12, 2012). EPA presents preliminary benefits estimates based on the stated preference survey in the BA to demonstrate progress on this effort. In the absence of final survey results, EPA estimated partial nonuse benefits for the final rule using the benefits transfer approach from proposal. EPA updated the proposal results to incorporate additional stock assessment data for winter flounder, the species used as the basis for the analysis. Due to the challenges associated with estimating nonuse benefits, some nonuse benefits are described only qualitatively.

2. Timing of Benefits

Discounting refers to the economic conversion of future benefits and costs to their present values, accounting for the fact that individuals value future outcomes less than comparable near-term outcomes. Discounting enables a valid comparison of benefits and costs that occur across different periods. EPA used discounting to account for differences in the timing across benefits and costs under the final rule and options considered. EPA estimated the expected benefits of the final rule once the rule takes full effect, then used discounting to account for delays in the realization of benefits. Two different delays affect the timing of benefits under the final rule and options considered.

First, facilities will begin to incur costs prior to technology installation. Facilities will face regulatory requirements once the rule is effective, but it will take time for requirements to be developed and for the required technology to be installed. Analyzed facilities are assigned a technology installation year which considers facility characteristics and technology being installed. EPA assumed that facilities installing impingement technology tend to complete technology installation sooner than facilities installing closed-cycle cooling (for other options considered). The assignment of technology installation years is speculative on EPA's part, because EPA does not have sufficient data on hand to project the schedules that Directors will set for facilities. See Chapter 3 of the EA document for the final existing facilities rule for details on EPA's development of technology installation years. EPA effectively discounts benefits to a greater extent than costs to account for the lag between the incurrence of costs and the realization of benefits.

Second, an additional time lag will result between technology implementation and use values via increased fishery yields. This lag occurs because several years could pass between the time an organism is spared from impingement mortality or entrainment and the time of its potential harvest. For example, a larval fish spared from entrainment (in effect, at age 0) could be caught by a recreational angler at age 3, meaning that a 3-year time lag arises between the incurred technology cost and the realization of the estimated recreational benefit. Likewise, if a 1-year-old fish is spared from impingement and is then harvested by a commercial waterman at age 2, there is a 1-year lag between the incurred cost and the subsequent commercial fishery benefit. To account for this growth period, EPA applied discounting by species groups in each regional study. Note that nonuse values (depending on how they are measured) do not necessarily need to be discounted similarly.

3. Recreational Fishing Valuation

a. Recreational Fishery Methods

To estimate recreational benefits of the final options, EPA developed a benefits transfer approach on the basis of a meta-analysis of recreational fishing valuation studies designed to measure the various factors that determine WTP for catching an additional fish per trip. Regional benefits are summarized as follows (for details, see Chapter 7 of the BA):

1. Estimate the annual forgone catch of recreational fish (number of fish) attributable to impingement mortality and entrainment under current conditions.
2. Estimate the marginal value per fish using a benefit transfer function based on a meta-analysis of recreational fishing studies.
3. Multiply the forgone catch by the marginal value per fish to estimate the total annual value of the forgone catch.
4. Estimate the annual value of reductions in the forgone catch attributable to the regulatory analysis options.
5. Discount the time path of benefits at 3 and 7 percent to reflect the time lag between impingement mortality and entrainment reductions and increased harvests.

b. Estimated Benefits to Recreational Anglers

Decreasing impingement mortality and entrainment increases the number of fish available to be caught by recreational anglers, thereby increasing angler welfare. Exhibit X–5 shows the estimated benefits resulting from reduced impingement mortality and entrainment under today's final existing facilities rule and other options that EPA considered. The total annualized recreational fishing benefits for all regions at existing units of existing facilities for the final rule (impingement mortality and entrainment combined)

are $18 million using a 3 percent discount rate and $14 million using a 7 percent discount rate. Annual recreational fishing benefits for other options considered range from $17 to $43 million using a 3 percent discount rate and $13 million to $30 million using a 7 percent discount rate.

EXHIBIT X–5—ANNUAL RECREATIONAL FISHING BENEFITS FROM ELIMINATING OR REDUCING IM&E AT EXISTING UNITS AT EXISTING FACILITIES FOR THE FINAL RULE AND OTHER OPTIONS CONSIDERED

Regulatory option [a]	Increased harvest (million fish)	3% discount rate (million 2011$)	7% discount rate (million 2011$)
Proposal Option 4	6.1	17.1	12.6
Final Rule—Existing Units	6.5	18.2	13.5
Proposal Option 2	20.5	43.0	29.5
Baseline	25.3	78.8	72.0

[a] IM&E Effects by Option: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.

4. Commercial Fishing Valuation

Reductions in impingement mortality and entrainment at cooling water intake structures are expected to benefit the commercial fishing industry. By reducing the number of fish killed, the number of fish available for harvest is expected to increase. The next section summarizes the methods EPA used to estimate benefits to the commercial fishing sector. The section after that presents the estimated value of commercial fishing benefits.

a. Commercial Fishing Valuation Methods

The total loss to the economy from impingement mortality and entrainment impacts on commercially harvested fish species is determined by the sum of changes in both producer and consumer surplus. EPA assumed a linear relationship between stock and harvest, such that if 10 percent of the current commercially targeted stock were harvested, 10 percent of the commercially targeted fish lost to impingement mortality and entrainment would have been harvested absent impingement mortality and entrainment. The percentage of fish harvested is based on data of historical fishing mortality rates.

Producer surplus provides an estimate of the economic damages to commercial fishers, but welfare changes can also be expected to accrue to final consumers of fish and to commercial consumers (including processors, wholesalers, retailers, and middlemen) if the projected increase in harvest is accompanied by a change in price. The analysis of market impacts involves the following steps (for details, see Chapter 6 of the BA):

1. Assessing the net welfare changes for fish consumers due to changes in fish harvest and the corresponding change in fish price.
2. Assessing net welfare changes for fish harvesters due to the change in total revenue, which could be positive or negative.
3. Calculating the increase in net social benefits when the fish harvest changes by combining the welfare changes for consumers and harvesters.

For a more detailed description of the methodology for commercial fishing, see Chapter 6 of the BA.

b. Commercial Fishing Valuation Results

Exhibit X–6 presents the estimated annual commercial fishing benefits attributable to the proposed options. The results reported include the total reduction in losses in pounds of fish, and the value of this reduction discounted at 3 and 7 percent. Total estimated annualized commercial fishing benefits for the United States for the final rule are $0.9 million using a 3 percent discount rate and $0.7 million using a 7 percent discount rate. Annual commercial fishing benefits for other options considered range from $0.9 million to $3.9 million using a 3 percent discount rate and $0.7 million to $2.7 million using a 7 percent discount rate. EPA estimated the expected price changes from eliminating baseline levels of impingement mortality and entrainment and found them to be small, ranging from 0.2 to 2.5 percent.

EXHIBIT X–6—ANNUAL COMMERCIAL FISHING BENEFITS FROM ELIMINATING OR REDUCING IM&E AT EXISTING UNITS AT EXISTING FACILITIES FOR THE FINAL RULE AND OTHER OPTIONS CONSIDERED

Regulatory option [a]	Increased harvest (million lbs)	3% discount rate (million 2011$)	7% discount rate (million 2011$)
Proposal Option 4	5.3	0.9	0.7
Final Rule—Existing Units	5.7	0.9	0.7
Proposal Option 2	14.0	3.9	2.7
Baseline	17.3	8.0	7.2

[a] IM&E Effects by Option: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.

5. Nonuse Benefits

Aquatic organisms with no direct use benefits account for the majority of cooling water intake structure losses (Exhibit X–3). Although many individuals may not use a particular waterbody for recreation or fishing, individuals nevertheless may value improvements in that waterbody. To quantitatively assess the ecological gains from the final rule and other options considered, EPA took both of the only two approaches available for quantifying nonuse benefits—a benefits transfer approach and a stated

preference survey. It is not necessary to use a stated preference survey approach to calculate benefits; however, important nonuse benefits can be missed by not using a stated preference survey approach. So EPA took both approaches, but relied on only the benefits transfer approach for the benefits analysis supporting the final rule. The benefits transfer approach relies on the existence of previously published studies with values that can be transferred; in instances where nonuse is potentially significant, as is the case here, previously published studies would only include nonuse value if they adopted a stated preference approach.

EPA used a benefit transfer approach to partially monetize nonuse benefits associated with reductions in impingement mortality and entrainment of fish, shellfish, and other aquatic organisms under the regulatory options for the North Atlantic and Mid-Atlantic benefits regions. EPA applied estimated values from a study conducted in Rhode Island; these estimates are likely to be more representative of nonuse values held by individuals residing in the Northeast United States and less accurate in other regions. EPA was unable to identify comparable studies conducted in other regions that could be used to estimate nonuse values. Chapter 8 of the BA provides further detail on this analysis.

The preferred techniques used to estimate total values (including both use and nonuse values), in general, are benefits transfer or to conduct a stated preference survey. There are many studies in the environmental economics literature that quantify benefits or WTP associated with various types of water quality and aquatic habitat changes. However, none of these studies allows the isolation of non-market WTP associated with quantified reductions in impingement mortality and entrainment for forage fish or unlanded portion of commercial and recreational species.

a. Nonuse Benefits Transfer

EPA identified a recent stated preference survey of Rhode Island residents that is closely related to the 316(b) policy context. The study results have been published in multiple scientific journals and books including Johnston et al.[148] and Zhao et al.[149] Both the Rhode Island study and the present context address policy changes that increase the number of forage fish in aquatic habitat with unknown effects on overall fish populations. The Rhode Island study was developed originally as a case study addressing Rhode Island residents' preferences for the restoration of migratory fish passage over dams in Rhode Island's Pawtuxet and Wood-Pawcatuck watersheds. It estimates nonuse values by asking respondents to consider changes in ecological indicators reflecting quantity of habitat, abundance of wildlife, ecological condition, and abundance of migratory fish species. Within this study, estimated values were based on the relative change in abundance of fish species most affected by restoration.

Estimating benefit functions from the Rhode Island choice experiment survey [150] allows one to distinguish benefits associated with resource uses from those associated primarily with nonuse motives. Within the benefit transfer application, WTP is quantified for increases in non-harvested fish alone on the basis of the implicit price for migratory fish changes. This transfer holds constant all effects related to identifiable human uses (e.g., effects on catchable fish, public access, and observable wildlife). The remaining welfare effect—derived purely from effects on forage fish with little or no direct human use—may therefore be most accurately characterized as a nonuse benefit realized by households.

The estimation of nonuse values involved the following steps:

1. Use a model published by Zhao et al.[151] to estimate household WTP per percent increase in the number of fish in a given watershed. The household WTP values reflect a survey version that characterizes effects on the number of migratory fish passing upstream.

2. Calculate the relative change in abundance for the fish species most affected by the regulation. The structure of the transfer study dictates that WTP should be evaluated based on the single species that would experience the greatest relative increase in abundance from restoration and that WTP estimates from multiple species impacted by IM&E should not be treated as strictly additive. After reviewing available stock assessment data, current stock size, and the magnitude of IM&E, EPA determined winter flounder to be the species likely to experience the greatest percent increase in abundance among those species with sufficient stock information to conduct the analysis within the boundaries of the North Atlantic and Mid-Atlantic benefits regions. This species is harvested; however, early life stages of recreational and commercial species may be eaten by other organisms and therefore have nonuse values.

3. Estimate total household WTP by applying model results for WTP per percentage of estimated winter flounder impingement mortality and entrainment. Total regional WTP is the product of household WTP and the number of households in the affected region (for details, see Chapter 8 of the BA).

b. Estimated Nonuse Benefits for the North Atlantic and Mid-Atlantic Regions

EPA expects that a decrease in impingement mortality and entrainment will lead to increased fish abundance in affected water bodies, thus increasing nonuse benefits. Exhibit X–7 shows the benefits that would result from reducing impingement mortality and entrainment through today's final rule and other options considered. Application of the transfer study requires that the increases be expressed as a percent improvement relative to a maximum number of fish that could be supported. EPA calculated estimates of WTP on the basis of the increase in age-1 equivalent winter flounder relative to the estimated number of age-1 fish when the stock is at maximum sustainable yield, thus assuming that the population structure of the current stock is similar to the larger stock. The total annualized nonuse benefits for the North Atlantic and Mid-Atlantic regions for the existing unit provision of the final rule are $1 million using a 3 percent discount rate and $0.8 million using a 7 percent discount rate. For other options considered, annualized nonuse benefits range from $0.3 to $51 million using a 3 percent discount rate and $0.3 to $37 million using a 7 percent discount rate.

[148] Johnston, R.J., E.T. Schultz, E.T., K. Segerson, E.Y. Besedin, and M. Ramachandran. 2012. Enhancing the content validity of stated preference valuation: The structure and function of ecological indicators. Land Economics, 1: 102–120.

[149] Zhao, M., Johnson, R.J. and Schultz, E.T. 2013. What to Value and How? Ecological Indicator Choices in Stated Preference Valuation. Environmental Resource Economics. Published online, February 8, 2013.

[150] Johnston, R.J., E.T. Schultz, E.T., K. Segerson, E.Y. Besedin, and M. Ramachandran. 2012. Enhancing the content validity of stated preference valuation: The structure and function of ecological indicators. Land Economics, 1: 102–120; Zhao, M., Johnson, R.J. and Schultz, E.T. 2013. What to Value and How? Ecological Indicator Choices in Stated Preference Valuation. Environmental Resource Economics. Published online, February 8, 2013.

[151] Op cit.

EXHIBIT X–7—ANNUAL NONUSE BENEFITS FROM ELIMINATING OR REDUCING IM&E AT EXISTING UNITS AT EXISTING FACILITIES IN THE NORTH ATLANTIC AND MID-ATLANTIC REGIONS FOR THE FINAL RULE AND OPTIONS CONSIDERED [a]

Regulatory option [b]	Winter flounder IM&E (million A1E)	Increased winter flounder A1E abundance (%)	3% discount rate (millions 2011$)	7% discount rate (millions 2011$)
Proposal Option 4	0.03	0.02	0.3	0.3
Final Rule—Existing Units	0.08	0.07	1.0	0.8
Proposal Option 2	4.78	4.18	51.1	37.3
Baseline	6.23	5.44	99.1	96.9

[a] IM&E = impingement and entrainment; A1E = age-one equivalent.
[b] IM&E Effects by Option: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.

c. Stated Preference Survey

EPA conducted a stated preference survey to calculate benefits associated with minimizing adverse impacts to aquatic ecosystems from cooling water intakes. Refer to Sections VI.F.1 and X.D.1 for additional discussion of the stated preference survey. EPA did not rely on the results of its stated preference survey in estimating the benefits of today's rule.

6. Threatened and Endangered Species

This section summarizes methods and results of EPA's analysis of benefits from improved protection of T&E species from today's final rule and options considered. Chapter 5 of the BA provides further detail on this analysis.

Even if levels of mortality due to impingement and entrainment from cooling water intake structures of T&E species are low in absolute numbers, they may represent a substantial portion of annual reproduction because of the reduced population levels that cause a species to be protected. Consequently, impingement mortality and entrainment may either lengthen recovery time, or hasten the demise of these species. Adverse effects of cooling water intake structures on T&E species can occur in several ways:

- Populations of T&E species may suffer direct harm as a consequence of impingement mortality and entrainment.
- T&E species may suffer indirect harm if a cooling water intake structure alters food webs.
- Cooling water intake structures can alter habitat designated as critical to the long-term survival of T&E species.

Consequently, the 316(b) regulation will help preserve threatened and endangered species.

a. Qualitative Assessment of Impingement Mortality and Entrainment Impacts on T&E Species

By definition, T&E species are characterized by low population levels. As such, it is unlikely that these species are recorded in significant number, if recorded at all, in impingement mortality and entrainment monitoring studies. Thus, losses are difficult to identify and quantify in a framework developed for non-listed species. Consequently, EPA developed a qualitative methodology to estimate the number of T&E species affected by impingement mortality and entrainment.

To qualitatively assess the potential for cooling water intake structure impacts on aquatic T&E species, EPA constructed a database that assessed the geographical overlap of cooling water intake structure and habitat used by aquatic T&E species. This database identified the number of T&E species potentially affected by each regulated 316(b) facility, and the number of facilities potentially affecting each T&E species. Additional details are in Chapter 5 of the BA.

Using this database, EPA found 99 Federally-listed aquatic T&E species that overlap with at least one covered cooling water intake structure (an interaction in Exhibit X–8). T&E species included freshwater, marine, and anadromous fish, freshwater mussels, and sea turtles. On average, the habitat of each T&E species overlapped with 22 covered facilities (Exhibit X–8), suggesting that the 316(b) rule may have substantial positive benefits of ensuring the long-term sustainability and recovery of T&E species.

EXHIBIT X–8—NUMBER OF REGULATED 316(B) COOLING WATER INTAKE STRUCTURES IN AQUATIC T&E SPECIES HABITAT ON A PER-SPECIES BASIS

Subset of affected species [a b]	Species	Interactions [b]	Facilities per T&E species [c]	
			Avg	Max
All T&E Species	99	2,158	21.8	103
T&E Freshwater Mussels	53	1,176	21.8	103
T&E Anadromous Fish	12	235	19.6	101
T&E Freshwater Fish	21	65	3.1	7
T&E Snails	7	199	28.4	49
Sea Turtles	6	483	80.5	102

[a] Aquatic T&E species includes species listed as threatened or endangered by the U.S. Fish and Wildlife Service (freshwater) or National Oceanic and Atmospheric Administration National Marine Fisheries Service (marine). Only aquatic species overlapping with a minimum of one cooling water intake structure are included.
[b] Each interaction represents an overlap between the range of a T&E species and cooling water intake structure.
[c] Avg = average, Max = maximum.

b. Quantitative Assessment of Impingement Mortality and Entrainment Impacts on T&E Species

Although difficult to observe and quantify, EPA identified 14 T&E species with confirmed impingement mortality and entrainment based on facility impingement mortality and entrainment studies. EPA notes that some impingement mortality and entrainment studies identifying T&E losses were conducted prior to the listing of the species under the ESA. In addition to documented species-level instances of T&E mortality, EPA identified impingement mortality and entrainment at the level of genera [152] when these genera contain a T&E species whose habitat range overlapped the reporting facility's cooling water intake structure. Although these are not confirmed impingement mortality and entrainment of T&E species, they provide evidence that additional T&E species are likely to be directly affected by impingement mortality and entrainment. EPA found seven genus-level matches, suggesting that the 14 T&E species suffering impingement mortality and entrainment may be inaccurate.

Of the 14 Federally-listed T&E species for which EPA was able to document losses in impingement mortality and entrainment studies, EPA was able to quantify impingement mortality and entrainment for two species (pallid sturgeon and Topeka shiner). The documented impingement mortality and entrainment occurred before these species were Federally-listed. Data were either qualitative or of insufficient quality to quantify local or regional impingement mortality and entrainment for the remaining 12 Federally-listed T&E species. EPA also quantified impingement mortality and entrainment for the American paddlefish (*Polyodon spathula*), listed by several states as threatened or endangered under State law, using facility impingement mortality and entrainment studies. Exhibit X–9 presents EPA's estimates of baseline annual impingement mortality and entrainment, and reductions in impingement mortality and entrainment which EPA estimates will occur under the final rule and other options considered.

EXHIBIT X–9—BASELINE ANNUAL IM&E FOR T&E SPECIES AND REDUCTIONS FOR EXISTING UNITS AT EXISTING FACILITIES (A1ES) [a b]

Species	Proposal option 4	Final rule—existing units	Proposal option 2	Baseline
Paddlefish [c]	7,930.1	8,245.4	15,659.7	18,841.4
Pallid Sturgeon	65.4	67.6	78.0	89.5
Topeka Shiner	2,910.9	3,009.8	3,471.9	3,984.9
Total	10,906.4	11,322.8	19,209.5	22,915.7

[a] IM&E = impingement and entrainment; A1E = age-one equivalent.
[b] IM&E Effects by Option: Proposal Option 2 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.
[c] The American paddlefish is not a Federally-listed T&E species but is listed as threatened or endangered on several state lists.
[d] This analysis is based solely on IM controls.

Impingement mortality and entrainment is only one of many factors that adversely affect T&E species. Estimating total population impacts from changes in impingement mortality and entrainment requires estimates of current populations of these fish and estimates of other anthropogenic effects which were not readily available for all T&E species with quantified impingement mortality and entrainment at the time of this analysis. Therefore, EPA was unable to quantify effects on T&E populations from the 316(b) regulation.

c. Valuation Methods of T&E Fish Species

EPA had sufficient data from impingement mortality and entrainment studies to quantify impingement mortality and entrainment estimates for three T&E species, Topeka shiner, pallid sturgeon, and paddlefish (Exhibit X–9). Two of these species (pallid sturgeon and paddlefish) have potential use values. A limited recreational fishery (mostly catch and release) exists for paddlefish in several states; although harvesting pallid sturgeon is illegal, the species is sometimes caught by recreational anglers. EPA estimated recreational use values for pallid sturgeon and paddlefish by applying transfer values from a Random Utility Model analysis it conducted to evaluate recreational fishing benefits of the 316(b) Phase II regulation to quantified impingement mortality and entrainment (for details, see Chapter 5 of the BA).

EPA was unable to generate estimates of nonuse values for T&E fish species because reliable population estimates needed to transfer the values were unavailable. However, EPA emphasizes that nonuse values for T&E fish species are likely to be significantly greater than any use values. Harvest of these species is prohibited, reflecting a societal judgment that protection and preservation of these species is of greater value than harvest.

d. Estimated Monetary Benefits From Reduced Mortality of T&E Fish Species

Exhibit X–10 presents the estimated annualized benefits for a subset of T&E species. For existing units under the final rule, EPA estimates total annualized use benefits for T&E species with quantified impingement mortality and entrainment of $0.4 million using a 3 percent discount rate and $0.3 million using a 7 percent discount rate. For other options considered, annualized benefits range from $0.4 to $0.7 million using a 3 percent discount rate and $0.3 to $0.5 million using a 7 percent discount rate.

[152] Genera is the plural of genus. Genus is the rank superior to species in taxonomic biological classification. For example, the genus of Atlantic salmon (*Salmo falar*) is *Salmo.*

EXHIBIT X–10—ANNUAL USE BENEFITS FROM ELIMINATING OR REDUCING IM&E OF T&E SPECIES AT EXISTING UNITS OF EXISTING FACILITIES FOR THE FINAL RULE AND OTHER OPTIONS CONSIDERED [a b c]

Regulatory option	Increased harvest (number of fish)	3% discount rate (million 2011$)	7% discount rate (million 2011$)
Proposal Option 4	7,995.5	0.4	0.3
Final Rule—Existing Units	8,313.0	0.4	0.3
Proposal Option 2	15,737.7	0.7	0.5
Baseline	18,930.9	1.2	1.3

[a] IM&E = impingement and entrainment; T&E = threatened and endangered. Values are included for pallid sturgeon and paddlefish in the Inland region.

[b] IM&E Effects by Option: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = intake flow commensurate with closed-cycle cooling for facilities that have a DIF of greater than 125 mgd and impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd.

[c] This analysis is based solely on impingement mortality controls.

EPA notes that the benefit values presented in Exhibit X–10 represent only a fraction of values for T&E species potentially affected by the final existing facilities rule. The Agency was able to obtain only use values and for only a small subset of all affected T&E species. Moreover, because of the nature of T&E species, even a small increase in population could yield economic and ecological benefits (e.g., Richardson and Loomis; [153] Bell et al.; [154] Berrens et al.[155])

e. Valuation Methods for T&E Sea Turtles

In addition to estimating values of T&E fish with quantitative estimates of impingement mortality and entrainment, EPA estimated the WTP for sea turtle conservation. In this analysis, EPA applied estimates from a study using a stated preference valuation approach to estimate total economic value of a management program that reduces the risk of extinction of loggerhead sea turtles.[156]

Although impingement mortality and entrainment of turtles is relatively low compared to mortality from shrimp trawling and other fisheries,[157] it is known that reducing turtle mortality during juvenile and subadult life stages can have a substantial positive effect on population growth.[158] The marginal change in extinction probability of sea turtles due to 316(b) regulatory options is likely to be at least 0.01, or a 1 percent decrease in the probability of extinction over 25 years. This assessment is based on reports that impingement mortality and entrainment may result in the loss of more than 100 turtles per year and because turtle population growth rates are known to be sensitive to changes in juvenile and subadult life stages.[159]

f. Benefits From Reduced Mortality of T&E Sea Turtles

The U.S. range of loggerhead sea turtles includes the Gulf of Mexico, South Atlantic, Mid-Atlantic, and North Atlantic 316(b) regions.[160] To calculate national WTP for an increased 25-year survival probability of loggerhead sea turtles, EPA assumed the affected population to include households in States with 316(b) facilities that are in loggerhead sea turtle habitat. EPA determined that 54.8 million households would be willing to pay for improved protection of loggerhead sea turtles. Although incidences of mortality have been reported at facilities in California, Texas, Florida, South Carolina, North Carolina, and New Jersey, EPA does not have sufficient information to quantify total sea turtle losses due to intakes or the reductions in such losses that might occur from the final rule or options considered. But as an illustrative example, assuming that the survival probability of loggerhead sea turtles over 25 years were increased by 1 percent, and applying a mean household value of $0.37 (2011 dollars), the monetized value would be $19.3 million and $18.8 million using discount rates of 3 percent and 7 percent, respectively. EPA is presenting these estimates only to demonstrate the potential range of benefits, and is not including them in national benefits totals for the final rule and options considered. Actual household values and total benefits may be higher or lower than these estimates, with Proposal Option 2 likely to provide substantially greater benefits than the final rule and Proposal Option 4.

Because EPA does not currently have accurate national estimates of impingement mortality and entrainment for turtle species, nor are population models available that estimate the effect of 316(b) regulation on population size and extinction risk, these estimates are presented only as an illustrative example and are not included in national totals.

g. Other Indications of Society's WTP for Protection of T&E Species

Many sources provide information that indicates that society places significant value on protecting T&E species. These include, but are not limited to:

• The Endangered Species Act of 1973, which provides for the conservation of T&E species of fish and wildlife. Federal and State expenditures on T&E species were $593 million during fiscal year 2011 just on protection of those Federally-listed T&E species that have habitat overlapping cooling water intake structures. This accounted for 68 percent of the $869 million spent on fish, marine reptiles, crustaceans, corals, clams, aquatic snails and marine mammals listed under the Endangered Species Act.[161]

[153] Richardson, L., and J. Loomis. 2009. The total economic value of threatened, endangered and rare species: An updated meta-analysis. Ecological Economics, 68(5): 1535–1548.

[154] Bell, K.P., D. Huppert, and R.L. Johnson. 2003. Willingness to pay for local coho salmon enhancement in coastal communities. Marine Resource Economics, 18: 15–31.

[155] Berrens, R.P., P. Ganderton, and C.L. Silva. 1996. Valuing the protection of minimum instream flow in New Mexico. Journal of Agricultural and Resource Economics 21(2): 294–309.

[156] Whitehead, J.C. 1993. Total economic values for coastal and marine wildlife: specification, validity, and valuation issues. Marine Resource Economics, 8(2): 119–132.

[157] Plotkin, P.T., (Ed). 1995. National Marine Fisheries Service and U. S. Fish and Wildlife Service Status Reviews for Sea Turtles Listed under the Endangered Species Act of 1973. National Marine Fisheries Service. Silver Spring, MD.

[158] Crouse, D.T., L.B. Crowder, and H. Caswell. 1987. A stated-based population model for loggerhead sea turtles and implications for conservation. Ecology, 68(5): 1412–1423.

[159] Ibid.

[160] U.S. Fish and Wildlife Service (USFWS) (2010c). ''North Florida Ecological Services Office: Loggerhead Sea Turtle (Caretta).'' Available at *http://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/loggerhead-sea-turtle.htm.*

[161] U.S. Fish and Wildlife Service. 2012. Federal and State Endangered and Threatened Species Expenditures. Fiscal Year 2011.

• Restrictions on activities in the habitat occupied by T&E species. For example, water diversions on the San Joaquin-Sacramento River delta, in place to protect the Delta Smelt (*Hypomesus transpacificus*), limit the extraction of water for drinking and agriculture.

• The willingness of individuals to volunteer their time to conserve T&E species. For example, dozens of organizations recruit thousands of volunteers every year to participate in sea turtle conservation and research projects. Volunteers are often required to undergo substantial training and commit to long hours.

While costs to replace, protect, or enhance stocks, and costs to users affected by efforts to conserve stocks are not direct measures of economic benefits, they indicate that society is willing to pay significant sums to protect and restore populations of T&E species. Although impingement mortality and entrainment is only one of many stressors on these species, reducing the amount of impingement mortality and entrainment could contribute to the recovery of populations over time, thereby eliminating some costs associated with conserving T&E species.

7. Assessment of Thermal Discharge Impacts

In addition to reducing total impingement mortality and entrainment, closed-cycle cooling reduces thermal pollution. Most retrofit installations of cooling towers at electric generating facilities have been required by NPDES permits to reduce thermal discharges. Since thermal discharges are a product of cooling water intake structures, the impacts of thermal discharges are a relevant benefit to consider when assessing appropriate technologies to reduce the effects of cooling water intakes. The installation of technologies, such as closed-cycle cooling systems, can reduce thermal pollution significantly. Thermal pollution has long been recognized to cause harm to the structure and function of aquatic ecosystems. Concerns about the impacts of thermal discharges are addressed by State water quality standards that, when implemented through NPDES permits, limit the amount of heat that can be discharged to a receiving water and result, in some cases, in technology-based permit conditions. Section 316(a) of the CWA applies to point sources with thermal discharges. It authorizes the NPDES permitting authority to impose alternative effluent limitations for the control of the thermal component of a discharge in lieu of the effluent limitations that would otherwise be required under sections 301 or 306 of the CWA. Before such a ''thermal variance'' can be granted, the permittee must demonstrate that the alternative limit will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made. 40 CFR 125.73(a).

EPA did not quantify nationally the impacts of thermal discharges. However, numerous studies have shown that thermal discharges may substantially alter the structure of aquatic communities by modifying photosynthetic, metabolic, and growth rates. Thermal discharges also harm aquatic life by reducing levels of dissolved oxygen, altering the location and timing of fish behavior such as spawning, aggregation, and migration, and may cause thermal shock-induced mortality for some species. Adverse temperature effects may also be more pronounced in aquatic ecosystems that are already subject to other environmental stressors such as high levels of biochemical oxygen demand, nutrient and sediment contamination, or pathogens. Within mixing zones, which often extend several miles downstream from outfalls, thermal discharges may impair efforts to restore and protect the waterbody. For example, permit requirements to limit nitrogen discharges in a watershed, and thereby reduce harmful algal blooms, may be counteracted by thermal discharges which promote growth of harmful algae. Thermal discharges may have indirect effects on fish and other vertebrate populations through increasing pathogen growth and infection rates.

Thermal discharges may thus alter the ecological services, and reduce the benefits, of aquatic ecosystems that receive heated effluent. The magnitude of thermal effects on ecosystem services is related to facility-specific factors, including the volume of the waterbody from which cooling water is withdrawn and returned, other heat loads, the rate of water exchange, the presence of nearby refugia, and the assemblage of nearby fish species.

8. Assessment of Social Cost of Carbon

The social cost of carbon reflects the estimated increase in the burden of global warming to society in future years due to higher greenhouse gas (GHG) emissions, measured as CO_2 equivalents, associated with additional energy requirements—energy penalty, auxiliary energy requirements, and compliance technology installation—of regulatory options. EPA estimated positive or negative benefits associated with the social cost of carbon for decreases or increases, respectively for Proposal Option 4 and Final Rule or Proposal Option 2, in energy requirements at regulated facilities under the final rule and other options considered.

EPA's estimates of changes in CO_2 emissions were based on results from the electricity market analysis using IPM.[162] For electric generators, EPA estimated the change in CO_2 resulting from the energy penalty associated with close-cycle recirculating technology, auxiliary energy requirement for operating compliance technology, and technology installation downtime. For manufacturers, EPA estimated the change in carbon emissions resulting from the energy penalty and auxiliary energy requirement. For compliance technology installation downtime at manufacturers, EPA assumed no change in carbon emissions as the short-term replacement of energy by electric power generating facilities that would otherwise be produced at manufacturers could either increase or decrease emissions.

To estimate benefits associated with the reductions in carbon emissions, EPA used social cost of carbon values calculated from the 2013 document titled, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, developed by the U.S. Government Interagency Working Group on Social Cost of Carbon. The Agency used the Working+ Group's annual social cost of carbon values for 2010 through 2050 based on the 3 percent average discount rate, which EPA has concluded is the most appropriate discount rate for intergenerational benefits such as the social cost of carbon. See Chapter 9 of the BA for annual social cost of carbon values based on discount rates of 2.5, 3 (high) and 5 percent. Benefits for each year of the analysis period were calculated by multiplying the change CO_2 emissions by the SCC value for that year. Similar to the treatment of other benefits, EPA discounted all year-specific social cost of carbon values to the beginning of 2013 and calculated an annualized value over 51 years using a 3-percent discount rate. EPA acknowledges that it is mixing estimates of benefits categories analyzed at different discount rates, but finds in this

[162] For this analysis, EPA used the Integrated Planning Model (IPM®), a comprehensive electricity market optimization model that assesses such impacts within the context of regional and national electricity markets.

case that using different discount rates is justified by the intergenerational nature of the social cost of carbon, for purposes of the sensitivity analysis based on a 7 percent discount rate to discount other benefit categories.

Exhibit X–11 presents annualized benefits for existing units for the final rule and options considered. Included in the monetized benefits is EPA's estimate that the final rule will reduce greenhouse gas emissions by 9.3 million tons of CO_2-equivalent emissions over the 40-year compliance period for this analysis. Both the final rule and Proposal Option 4 result in a net reduction in CO_2 emissions for existing units during the analysis period. Proposal Option 2 would result in a net increase in emissions and negative benefits for existing units. Using a 3 percent discount rate, annualized benefits under the final rule for existing units are $12 million. Using a 7 percent discount rate, annualized benefits under final rule for existing units are $13 million.

EXHIBIT X–11—BENEFITS ASSOCIATED WITH SOCIAL COST OF CARBON FOR EXISTING UNITS FOR THE FINAL RULE AND OTHER OPTIONS CONSIDERED

[In millions of 2011 dollars] [a]

Regulatory option [b]	3% Discount rate	7% Discount rate
Proposal Option 4	12.4	13.4
Final Rule—Existing Units	12.4	13.4
Proposal Option 2	−1,643.1	−1,218.2

[a] Benefits are based on the workgroup's average social cost of carbon values using 3 percent rate.

9. Benefits for New Units

In addition to the final rule and other options considered for existing units, EPA analyzed the benefits of the requirements for new units at existing facilities. EPA could not directly apply the benefits methodology used for IM&E (impingement mortality and entrainment) reductions at existing units to new units because it lacks facility-specific information to estimate regional impingement mortality and entrainment reductions for new units. Instead, EPA estimated benefits associated with IM&E reductions for the new unit requirements on the basis of the monetary benefits per million gallons per day from the analysis of existing units. EPA also estimated benefits associated with changes in GHG emissions as the result of the energy penalty associated with operating cooling towers using the social cost of carbon. Exhibit X–12 below presents the estimates of monetized benefits for the new unit requirements. Monetized benefits are −$0.2 million discounted at 3 percent and −$0.1 million discounted at 7 percent.

EXHIBIT X–12—NATIONAL BENEFITS UNDER THE FINAL RULE FOR NEW UNITS AT EXISTING FACILITIES

[In 2011 dollars]

Regulatory option [a]	Monetized benefit categories					
	Recreational fishing	Commercial fishing	Nonuse	T&E species [b]	Social cost of carbon [c]	Total
3% discount rate (millions 2011$)						
Final Rule—New Units	0.0	0.0	0.1	0.0	−0.3	−0.2
7% discount rate (millions 2011$)						
Final Rule—New Units	0.0	0.0	0.0	0.0	*−0.2*	−0.1

[a] IM&E Effects: Final Rule—New Units—entrainment requirements for all stand-alone facilities.
[b] Benefits estimates for T&E species are restricted to recreational fishing benefits from increased catch of T&E species. They do not include benefits for reduced mortality of T&E sea turtles and other nonuse values associated with T&E species.
[c] Benefits are based on the Work Group's average social cost of carbon values using the 3 percent rate.

10. National Monetized Benefits

Quantifying and monetizing reductions in impingement mortality and entrainment attributable to the final rule and other options considered is challenging. National benefit estimates are subject to uncertainties inherent in valuation approaches used to assess the benefits categories (see Chapters 5, 6, 7, 8, 9, and 12 of the BA). While EPA has no data to indicate that the results for each benefit category are atypical or unreasonable, some potentially significant benefit categories have not been fully monetized, and thus the national monetized benefits presented below likely underestimate total benefits.

Exhibit X–13 presents EPA's estimates of the partial monetized benefits from impingement mortality and entrainment reduction and the social cost of carbon for the final rule and other options considered. These monetized values represent use values from increased commercial and recreational catch, benefits transfer of recreational fishing benefits of threatened and endangered species, nonuse values associated with an increase in fish abundance (those fish that are not caught) in the Northeast and Mid-Atlantic benefit regions, and national benefits estimates associated with the social cost of carbon. For the final rule for existing and new units, partial estimated benefits from reducing impingement mortality and entrainment at existing units are $33 million using a 3 percent discount rate and $29 million using a 7 percent discount rate. EPA was not able to fully monetize the benefits for the final rule. Thus, the estimates represent a conservative (i.e., low) estimate of total regulatory benefits of the final rule.

EXHIBIT X–13—SUMMARY OF NATIONAL BENEFITS FOR ALL REGULATED FACILITIES FOR THE FINAL RULE

Regulatory option [a]	Monetized benefit categories					
	Recreational fishing	Commercial fishing	Nonuse	T&E species [b]	Social cost of carbon [c]	Total
3% discount rate (millions 2011$)						
Final Rule—Existing Units	18.2	0.9	1.0	0.4	12.4	33.0
Final Rule—New Units	0.0	0.0	0.1	0.0	−0.3	−0.2
Final Rule (Existing Units + New Units)	18.3	0.9	1.1	0.4	12.1	32.8
7% discount rate (millions 2011$)						
Final Rule—Existing Units	13.5	0.7	0.8	0.3	13.4	28.7
Final Rule—New Units	0.0	0.0	0.1	0.0	−0.2	−0.1
Final Rule (Existing Units + New Units)	13.5	0.7	0.9	0.3	13.2	28.6

[a] IM&E Effects: Final Rule–Existing Units = impingement mortality standards based on modified traveling screens for all facilities with flow greater than 2 mgd; Final Rule–New Units: Entrainment requirements for all stand-alone facilities where the turbine and condenser are newly built or replaced.
[b] Benefits estimates for T&E species are restricted to benefit transfer of recreational fishing benefits from T&E species. They do not include benefits for reduced mortality of T&E sea turtles and other nonuse values associated with T&E species.
[c] Baseline does not include potential benefits associated with the social cost of carbon.

Exhibit X–14 presents total monetized benefits for the final rule and other options EPA considered for existing units by benefit category using a 3 percent discount rate. Annual monetized benefits are slightly higher for the final rule than Proposal Option 4, and are negative for Proposal Option 2. Including both existing and new units, annual monetized benefits are $32.8 million for the final rule, $30.8 million for Proposal Option 4 and −$1,542.8 million for Proposal Option 2.

EXHIBIT X–14—SUMMARY OF NATIONAL BENEFITS FOR ALL REGULATED FACILITIES FOR THE FINAL RULE AND OTHER OPTIONS EPA CONSIDERED

[3% Discount rate]

Monetized benefit categories	Annual benefits by regulatory option [a] (*millions 2011$*)		
	Proposal option 4	Final rule—existing units	Proposal option 2
Existing Units			
Recreational Fishing	17.1	18.2	43.0
Commercial Fishing	0.9	0.9	3.9
Nonuse	0.3	1.0	51.1
T&E Species [b]	0.4	0.4	0.7
Social Cost of Carbon	12.4	12.4	−1,641.3
Total	31.0	33.0	−1,542.6
Final Rule—New Units			
Total	−0.2	−0.2	−0.2
Existing and New Units			
Total	30.8	32.8	−1,542.8

[a] IM&E Effects: Proposal Option 4 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 50 mgd; Final Rule—Existing Units = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd; Proposal Option 2 = impingement mortality limitations based on modified traveling screens for all facilities with flow greater than 2 mgd and entrainment mortality limitations commensurate with closed-cycle recirculating systems for all facilities with flow greater than 125 DIF; Final Rule—New Units: entrainment requirements for all stand-alone facilities.
[b] Benefits estimates for T&E species are restricted to benefit transfer of recreational fishing benefits from T&E species. They do not include benefits for reduced mortality of T&E sea turtles and other nonuse values associated with T&E species.

EPA recognizes that its estimates of ecological and economic benefits projected to occur under regulation are affected by uncertainty at many levels.

- Not all ecological goods and services affected by cooling water intake structures at regulated 316(b) facilities are modeled or monetized, suggesting that the total benefits of regulation may be underestimated. For example, potential increases in ecosystem stability that might occur as a result of regulation is not explicitly estimated nor monetized.
- When particular ecological goods and services are monetized, data is not always available at the national level. For example, EPA was only able to estimate the nonuse benefits transfer for a species that represents less than one

percent of adverse environmental impacts.

• For the proposed rule, EPA used a habitat-based method to assess potential WTP for reducing fish mortality at CWIS based on the approximate area of habitat required to produce and support the number of organisms lost to impingement mortality and entrainment.[163] EPA did not consider the habitat-based approach appropriate for primary analysis of benefits for the proposed rule, and did not include it in its analysis for the final rule. However, the results for the proposed rule illustrate that total benefits may be substantially greater than benefits estimated using the methodologies described in Section D.

Because EPA was able to only partially monetize nonuse benefits using the benefits transfer approach, EPA expects that the actual benefits will be greater than those presented here.

XI. Related Acts of Congress, Executive Orders, and Agency Initiatives

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

Under section 3(f)(1) of E.O. 12866 (58 FR 51735, October 4, 1993), this action is an *economically significant regulatory action* because it is likely to have an annual effect of $100 million or more on the economy. Accordingly, EPA submitted this action to the Office of Management and Budget for review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to Office of Management and Budget recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the costs and benefits associated with this action; this analysis is discussed in detail in the Chapter 8 of the EA. A copy of the EA is available in the docket for this action, and the analysis is briefly summarized here.

Exhibit XI–1 (drawn from Chapter 8 of the EA) provides the results of the benefit-cost analysis.[164] Placeholders for option-specific non-monetized benefits are represented by B_{P4} for Proposal Option 4, B_{FR} for the final rule and B_{P2} for Proposal Option 2. While preliminary, and not yet reviewed by EPA's Science Advisory Board, the preliminary results of EPA's stated preference survey (see BA, Chapter 11) suggest that B_{P4}, B_{FR}, and B_{P2} have the potential to be significantly different from zero. EPA is therefore using placeholders for additional benefits that are not captured by its analysis of use benefits and the benefits transfer for nonuse benefits. However, EPA did not rely on the results of its stated preference survey in estimating the benefits of today's rule. EPA has concluded that the benefits of the rule justify the costs.

EPA also analyzed the employment effects of the final rule and other options considered in development of this rule. The results of that analysis are summarized in Section IX.E of this preamble and Chapter 9 of the EA.

EXHIBIT XI–1—ANNUALIZED BENEFITS AND COSTS OF THE REGULATORY OPTIONS

[In millions, 2011 dollars] [a]

Option	Total social costs [b]	Benefits [c]
Proposal Option 4	$251.8	$31.0 + B_{P4}
Final Rule	274.9	32.8 + B_{FR}
Proposal Option 2	3,643.2	−1,542.6 + B_{P2}

[a] Social costs and benefits were annualized over 51 years and discounted using 3 percent rate.
[b] Total social costs include compliance costs to facilities and government administrative costs. See EA Chapter 7.
[c] Benefits include social cost of carbon from changes in greenhouse gas emissions due to the final rule.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The supporting statement in EPA's information collection request estimates the burden to permitted facilities; burden is defined at 5 CFR 1320.3(b). The 60-day comment period will commence after publication of the draft ICR. The information collection requirements are not enforceable until they are approved by OMB.

Today's rule requires several distinct types of information collection as part of the NPDES permit application. In general, the information will be used to assist EPA in regulating environmental impacts, namely impingement mortality and entrainment, at cooling water intake structures and to identify how a cooling water intake structure at an existing facility or a new unit at an existing facility will meet the impingement mortality and entrainment requirements. Today's rule also requires other reporting and recordkeeping requirements to demonstrate and document compliance with the requirements. Compliance with the applicable information collection requirements established under this final rule is mandatory (see §§ 122.21(r), 125.136, 125.137, 125, and 138).

EPA does not consider the specific data that will be collected under this final rule to be confidential business information. However, if a respondent does consider this information to be confidential, the respondent may request that such information be treated as confidential. All confidential data submitted to EPA will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

This final rule modifies regulations at § 122.21 to require each existing facility and new unit at an existing facility to prepare and submit information as part of the facility's NPDES permit application. A detailed list of required data items is provided below.

EPA estimates an average annual burden of 634,596 hours for the final rule's information collection requirements. Of this total, EPA estimates that 1,068 regulated facilities

[163] U.S. EPA. 2011. Environmental and Economic Benefits Analysis for the Proposed Section 316(b) Existing Facilities Rule.

[164] The costs and benefits presented in this section assume that facilities with impoundments will qualify as having closed-cycle recirculating systems in the baseline EPA also conducted the costs and impacts analysis where impoundments were not assumed to meet the definition of closed-cycle recirculating. EPA did not find that this assumption would change EPA's final rule decision; see DCN 12–2501.

will incur an annual average burden of 588 hours per respondent (for a total of 627,666 burden hours). EPA estimates that Directors in 46 States and one territory with NPDES permitting authority, will incur an annual average burden for the review, oversight, and administration of the rule, of 6,930 hours, or an annual average of 147 hours per permitting authority. Slight differences in calculations are due to rounding.

The corresponding estimate of costs other than labor (labor and non-labor costs are included in the total cost of the final rule discussed in Section IX of this preamble) during the first three years after promulgation of the rule is an annual average of $8.5 million. Non-labor costs include activities such as capital costs for sampling equipment, remote monitoring devices, laboratory services, photocopying, and the purchase of supplies. The burden and costs are for the information collection, reporting, and recordkeeping requirements for the three-year period beginning with the assumed effective date of this rule. Additional information collection requirements will occur after this initial three-year period as (1) existing facilities will continue to gather and submit required permit application materials and (2) new units at existing facilities commence operations and are issued permits.

Information and studies to be submitted under this final rule (as required by §§ 122.21(r) and 125.95) by existing facilities and new units at existing facilities are listed below. For more information, see Section VIII in the preamble.

- Source Water Physical Data (§ 122.21(r)(2))
- Cooling Water Intake Structure Data (§ 122.21(r)(3))
- Source Water Baseline Biological Characterization Data (§ 122.21(r)(4))
- Cooling Water System Data (§ 122.21(r)(5))
- Chosen Method of Compliance With Impingement Mortality Standards (§ 122.21(r)(6))
- Performance Studies (§ 122.21(r)(7))
- Operational Status (§ 122.21(r)(8))
- Entrainment Characterization Study (§ 122.21(r)(9))
- Comprehensive Technical Feasibility and Cost Evaluation Study (§ 122.21(r)(10))
- Benefits Valuation Study (§ 122.21(r)(11))
- Non-Water Quality and Other Environmental Impacts Study (§ 122.21(r)(12))

In addition to the information requirements of the permit application, NPDES permits normally specify monitoring and reporting requirements to be met by the permitted entity. Existing facilities and new units at existing facilities are required to perform monitoring as determined by the requirements in § 125.94 and in accordance with §§ 125.96 and 125.97.

Finally, in accordance with § 125.95(e), facilities are required to maintain records of all submissions that are part of its permit application for a minimum of five years. If the Director approves a request for reduced permit application studies under § 125.95(a) or § 125.98(g), the facility must keep records of all submissions that are part of a previous permit application for an additional five years. Also, facilities must keep records of all submissions that are part of the permit reporting requirements for a period of at least five years from the date of permit issuance, in accordance with § 125.97(d).

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

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act 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.

1. Definition of Small Entities and Estimation of the Number of Small Entities Subject to Today's Final Regulation

For EPA's assessment of the impact of today's final rule on small entities, *small entity* is defined as either (1) a small business as defined by SBA (Small Business Administration) 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 fewer than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Federal or State entities owning regulated facilities are not small entities.

EPA performed this assessment separately for the two classes of facilities and their owner entities—electric generators and manufacturers—that are subject to today's rule.

a. Electric Generators

EPA followed the SBA criteria for identifying small, non-government entities in the electric power industry, as follows:

- For non-government entities with electric power generation as a primary business, small entities were designated using employment size thresholds specific to each 6-digit NAICS code.
- For government entities other than Federal or State governments, small entities are those with a population of fewer than 50,000.
- For entities with a primary business other than electric power generation, the relevant size criteria are based on revenue or number of employees by NAICS sector (see Exhibit XI–2).

EXHIBIT XI–2—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR ENTITIES THAT OWN ELECTRIC GENERATORS WITH A PRIMARY BUSINESS OTHER THAN ELECTRIC POWER GENERATION

NAICS code	NAICS description	SBA size standard
212111	Bituminous Coal and Lignite Surface Mining	500 employees.
221210	Natural Gas Distribution	500 employees.
331110	Iron and Steel Mills and Ferroalloy Manufacturing	1,000 employees.
331315	Aluminum Sheet, Plate, and Foil Manufacturing	750 employees.
333611	Turbine and Turbine Generator Set Units Manufacturing	1,000 employees.
488320	Marine Cargo Handling	$35.5 million in revenue.
491110	Postal Service	$7 million in revenue.
522110	Commercial Banking	$175 million in assets.
523910	Miscellaneous Intermediation	$7 million in revenue.
524126	Direct Property and Casualty Insurance Carriers	1,500 employees.

EXHIBIT XI–2—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR ENTITIES THAT OWN ELECTRIC GENERATORS WITH A PRIMARY BUSINESS OTHER THAN ELECTRIC POWER GENERATION—Continued

NAICS code	NAICS description	SBA size standard
525910	Open-End Investment Funds	$7 million in revenue.
525990	Other Financial Vehicles	$7 million in revenue.
541990	All Other Professional, Scientific, and Technical Services	$14 million in revenue.
551112	Offices of Other Holding Companies	$7 million in revenue.
562212	Solid Waste Landfill	$35.5 million in revenue.
562219	Other Nonhazardous Waste Treatment and Disposal	$35.5 million in revenue.
562920	Materials Recovery Facilities	$19 million in revenue.
611310	Colleges, Universities, and Professional Schools	$25.5 million in revenue.

EPA conducted this analysis for the same set of parent entities it analyzed in the general entity-level cost-to-revenue analysis discussed in Section IX.D. To determine whether these are small entities on the basis of the size criteria outlined above, EPA compared the relevant measure for the identified parent entities to the appropriate SBA size criterion. EPA conducted this analysis using (1) facility-level weights without using entity-level weights, and (2) entity-level weights without using facility-level weights (for information on these two weighting approaches, see Appendix H of the EA).

EPA estimates that between 31 and 52 small entities own electric generators that are subject to the rule. They represent approximately 25 to 32 percent of entities that own electric generators (see Exhibit XI–3).

EXHIBIT XI–3—NUMBER OF ENTITIES THAT OWN ELECTRIC GENERATORS, BY OWNERSHIP TYPE

Ownership type [a]	Using facility-level weights			Using entity-level weights [b]		
	Total	Small	% Small	Total	Small	% Small
Cooperative	13	11	84.6	21	18	85.7
Federal	1	0	0.0	1	0	0.0
Investor-owned	57	6	10.5	60	7	11.7
Municipality	19	7	36.8	38	19	50.0
Nonutility	26	7	26.9	30	8	26.7
Other Political Subdivision	4	0	0.0	6	0	0.0
State	3	0	0.0	3	0	0.0
All Entity Types	123	31	25.2	159	52	32.7

[a] State and Federal entities are considered large.
[b] In addition to the 52 small parent entities on an unweighted basis, one additional entity is an "other political subdivision entity" for a total of 53. This entity owns only implicitly analyzed facilities; consequently, there is no explicitly analyzed entity in the other political subdivision ownership category to represent this implicitly analyzed small parent entity. As the result, weighted entity counts do not include one small other political subdivision entity.

b. Manufacturers

EPA also used the SBA criteria for identifying small, non-government entities in the manufacturing sector. Exhibit XI–4 lists the SBA size threshold guidelines for entities that own manufacturers.

EXHIBIT XI–4—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR ENTITIES THAT OWN MANUFACTURERS

NAICS code	NAICS description	SBA size standard
111930	Sugarcane Farming	$0.75 million in revenue.
113110	Timber Tract Operations	$7 million in revenue.
211111	Crude Petroleum and Natural Gas Extraction	500 employees.
212210	Iron Ore Mining	500 employees.
212391	Potash, Soda, and Borate Mineral Mining	500 employees.
221122	Electric Power Distribution	4,000,000 MWh of electric generation.
311221	Wet Corn Milling	750 employees.
311314	Cane Sugar Manufacturing	750 employees.
311313	Beet Sugar Manufacturing	750 employees.
311942	Spice and Extract Manufacturing	500 employees.
313210	Broadwoven Fabric Mills	1,000 employees.
321113	Sawmills	500 employees.
322121	Paper (except Newsprint) Mills	750 employees.
322122	Newsprint Mills	750 employees.
322130	Paperboard Mills	750 employees.
322211	Corrugated and Solid Fiber Box Manufacturing	500 employees.
322220	Paper Bag and Coated and Treated Paper Manufacturing	500 employees.
322291	Sanitary Paper Product Manufacturing	500 employees.
324110	Petroleum Refineries	1,500 employees.

EXHIBIT XI–4—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR ENTITIES THAT OWN MANUFACTURERS—Continued

NAICS code	NAICS description	SBA size standard
324191	Petroleum Lubricating Oil and Grease Manufacturing	500 employees.
325120	Industrial Gas Manufacturing	1,000 employees.
325180	Other Basic Inorganic Chemical Manufacturing	1,000 employees.
325199	All Other Basic Organic Chemical Manufacturing	1,000 employees.
325211	Plastics Material and Resin Manufacturing	750 employees.
325311	Nitrogenous Fertilizer Manufacturing	1,000 employees.
325320	Pesticide and Other Agricultural Chemical Manufacturing	500 employees.
325412	Pharmaceutical Preparation Manufacturing	750 employees.
325510	Paint and Coating Manufacturing	500 employees.
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	500 employees.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500 employees.
331110	Iron and Steel Mills and Ferroalloy Manufacturing	1,000 employees.
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	1,000 employees.
331221	Rolled Steel Shape Manufacturing	1,000 employees.
331222	Steel Wire Drawing	1,000 employees.
331313	Alumina Refining and Primary Aluminum Production	1,000 employees.
331315	Aluminum Sheet, Plate and Foil Manufacturing	750 employees.
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	1,000 employees.
332312	Fabricated Structural Metal Manufacturing	500 employees.
337910	Mattress Manufacturing	500 employees.
339999	All Other Miscellaneous Manufacturing	500 employees.
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100 employees.
423930	Recyclable Material Merchant Wholesalers	100 employees.
424510	Grain and Field Bean Merchant Wholesalers	100 employees.
424690	Other Chemical and Allied Products Merchant Wholesalers	100 employees.
424710	Petroleum Bulk Stations and Terminals	100 employees.
447190	Other Gasoline Stations	$14 million in revenue.
522220	Sales Financing	$7 million in revenue.
523910	Miscellaneous Intermediation	$7 million in revenue.
523930	Investment Advice	$7 million in revenue.
524126	Direct Property and Casualty Insurance Carriers	1,500 employees.
525990	Other Financial Vehicles	$7 million in revenue.
531110	Lessors of Residential Buildings and Dwellings	$25 million in revenue.
551112	Offices of Other Holding Companies	$7 million in revenue.
561110	Office Administrative Services	$7 million in revenue.

Similar to the analysis conducted for electric generators, EPA conducted this analysis for the same set of parent entities as analyzed in the general, entity-level, cost-to-revenue analysis discussed in Section IX.D. To determine which entities are small, EPA compared the relevant measure for the identified parent entities to the appropriate SBA size criterion. EPA used two sample-weighting schemes in this analysis; these provide a range of counts of small entities that own regulated facilities and the number of regulated facilities that they own that will incur costs under the final rule. EPA does not find either of these sample-weighting schemes to be superior to the other in the quality of the resulting estimates of small entity counts and occurrence of impacts. The different weighting approaches reflect the fact that EPA used sample facilities for the impact analysis and lacks precise information on the profile of ownership of the *total population* of regulated manufacturers facilities—in terms of the number of small entities owning regulated facilities and the number of regulated facilities that any small entity would own. EPA developed the weighting schemes using alternative bounding assumptions about the profile of ownership of regulated facilities by small entities. The weighting schemes provide lower and upper bound estimates of the numbers of small entities, and the numbers of regulated facilities that they own, and accordingly, the number of small entities in each of the cost-to-revenue impact categories (for information on the weighting schemes, see Appendix H of the EA).

From this analysis, EPA estimates that 17 to 52 small entities own regulated facilities in the six Primary Manufacturing Industries, representing approximately 16 percent of all entities that own regulated facilities in these industries (see Exhibit XI–5).The presence of small entities varies by industry sector.

EXHIBIT XI–5—NUMBER OF SMALL ENTITIES THAT OWN REGULATED FACILITIES, BY INDUSTRY

Industry	Lower-bound estimate of number of entities that own regulated facilities			Upper-bound estimate of number of entities that own regulated facilities		
	Total	Small	% Small	Total	Small	% Small
Aluminum	4	2	50.0	11	4	40.6
Chemicals and Allied Products	30	5	16.7	121	21	17.7
Food and Kindred Products	6	0	0.0	20	0	0.0
Paper and Allied Products	37	7	18.9	104	23	21.8
Petroleum Refining	16	2	12.5	25	2	8.4

EXHIBIT XI–5—NUMBER OF SMALL ENTITIES THAT OWN REGULATED FACILITIES, BY INDUSTRY—Continued

Industry	Lower-bound estimate of number of entities that own regulated facilities			Upper-bound estimate of number of entities that own regulated facilities		
	Total	Small	% Small	Total	Small	% Small
Steel	13	1	7.7	32	2	5.2
Multiple Industries [a]	4	0	0.0	14	0	0.0
Primary Manufacturing Industries [b]—Total	110	17	15.5	327	52	16.0

[a] These are small entities that own regulated facilities from multiple industries.
[b] EPA did not compile comparable information for Other Industries facilities and the entities that own them because it did not have a statistically valid sample of facilities from which to develop such estimates.

c. Total Number of Small Entities That Own Regulated Facilities

EPA estimates that between 48 and 104 small entities own regulated facilities in the electric power industry and six primary manufacturing industries together.

2. Statement of Basis

As described above, EPA began the small entity impact assessment by first estimating the number of small entities in the two industry segments subject to the final rule: Electric generators and manufacturers. EPA next assessed whether these small entities would be expected to incur costs that constitute a significant impact and, finally, assessed whether those entities represent a substantial number of small entities.

EPA summed annualized after-tax compliance costs for regulated facilities that are assumed to be owned by a given small entity and calculated the costs as a percentage of entity revenue (cost-to-revenue test). EPA compared the resulting percentages to impact criteria of 1 and 3 percent of revenue. EPA assumed that small entities estimated to incur costs below 1 percent of revenue will not face significant economic impacts, while small entities with costs of at least 1 percent of revenue have a chance of facing economic impacts. EPA assumed that entities incurring costs of at least 3 percent of revenue have a higher likelihood of economic impacts.

For both electric generators and manufacturers, EPA used sample-weighting approaches that provide a range of estimates of the numbers of small entities and regulated facilities that they own.

Exhibit XI–6 summarizes the Regulatory Flexibility Act analysis results under both weighting approaches for each regulated facilities segment. Overall, the RFA analysis for electric generators found that no small entities would potentially incur a significant impact under the final rule. Specifically, for electric generators, EPA estimates that zero to three small entities will incur costs exceeding 1 percent of revenue, while no small entity will incur costs exceeding 3 percent of revenue. Following EPA's guidance on conducting RFA analyses, the number of small entities above the threshold as a percent of all small entities subject to the rule are zero to 10 percent at the 1 percent of revenue threshold, and zero percent at the 3 percent of revenue threshold.

The findings for manufacturers are comparable. Specifically, EPA estimates that three to four small parent entities will incur costs exceeding 1 percent of revenue, and zero to one small parent entity will incur costs exceeding 3 percent of revenue. The associated percentages of small entities subject to the final rule are 8 percent to 18 percent at the 1 percent threshold, and zero percent to 6 percent at the 3 percent threshold.

Combining the electric generators and manufacturers segments, EPA estimates that three to seven small entities will incur costs exceeding 1 percent of revenue, while zero to one small entity will incur costs exceeding 3 percent of revenue. The corresponding percentages of small entities are 4 to 13 percent at the 1 percent threshold, and zero to 2 percent at the 3 percent threshold.

In summary, under the final rule, EPA estimates that a small number of small parent entities will incur a potentially significant cost impact in the individual regulated industry segments, and overall, for both segments. The maximum number of small entities estimated to incur costs exceeding 1 percent is seven, overall, with three of these small entities in the electric generators segment and four in the manufacturers segment. The maximum number of small entities with costs exceeding 3 percent is one, overall, with no small entities in the electric generators segment and one small entity in the manufacturers segments. In each case, the maximum value reflects the high end of an uncertainty range that is based on different sample weighting approaches. EPA judges that values in the interior of these ranges represent more reasonable estimates of the number of small entities incurring significant impacts. The estimated numbers of entities with significant impacts also represent small percentages of the estimated number of small entities, overall, and in the individual segments. The maximum percentage values at the 1 percent of revenue threshold are 13 percent, overall, 10 percent for electric generators, and 18 percent for manufacturers. At the 3 percent threshold, the maximum percentage values are 2 percent, overall, zero percent for electric generators, and 6 percent for manufacturers. Again, these values reflect the high end of an uncertainty range.

In view of these very modest impacts, EPA judges that the final rule is not consequential in terms of potential impacts for small entities.

EXHIBIT XI–6—ESTIMATED COST-TO-REVENUE IMPACT FOR SMALL ENTITIES THAT OWN FACILITIES SUBJECT TO THE REGULATION

Regulated Segment	Cost impact category			
	Cost ≥1% of revenue [a]		Cost ≥3% of revenue [a]	
	Number of small entities	% of small regulated entities [b]	Number of small entities [c]	% of small regulated entities [b]
Electric Generators	0 to 3	0% to 10%	0	0%
Manufacturers [d]	3 to 4	8% to 18%	0 to 1	0% to 6%
Electric Generators and Manufacturers [d]	3 to 7	4% to 13%	0 to 1	0% to 2%

[a] For both electric generators and manufacturers, EPA used sample-weighting approaches that provide a range of estimates of the numbers of small entities and regulated facilities they own (see Section VII(D)(a)(iv) for manufactures and see Section VII(D)(b)(1)(b) for electric generator weighting approaches).

[b] Percentage of small entities incurring a cost-to-revenue impact involves range estimates in both the numerator (number of affected entities) and denominator (number of regulated entities).

[c] Entities with cost-to-revenue ratios of at least 3 percent are included in the number of entities with cost-to-revenue such ratios of at least 1 percent.

[d] Entity counts used in these calculations exclude manufacturers in other industries. EPA estimated that one small parent entity that owns regulated facilities in other industries would incur costs exceeding 1 percent of revenue.

3. Certification Statement

Given these findings of very small absolute numbers of small entities estimated to incur significant impacts under the final rule, and low percentages of estimated small entities incurring impacts, I certify that the final rule will not have ''a significant impact on a substantial number of small entities'' (no SISNOSE), overall and by individual industry segment.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Today's rule contains a Federal mandate that may result in expenditures by State, local, and Tribal governments, in the aggregate, or the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Accordingly, under Unfunded Mandates Reform Act section 202, EPA has prepared a written statement, which follows below (see Chapter 11 of the EA).

1. Summary of Written Statement

a. Authorizing Legislation

Today's rule is issued under the authority of CWA sections 101, 301, 304, 306, 308, 316, 401, 402, 501, and 510, (33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1326, 1341, 1342, 1361, and 1370). For detailed information on the legal authority of this rule, see Section III of this preamble.

b. Benefit-Cost Analysis

As described above, the costs, benefits and economic impacts reported in this section may be underestimated due to EPA's assumption that facilities with impoundments will qualify as having closed-cycle recirculating systems in the baseline and thus, unless additional controls are required to protect listed species, will incur no technology-related costs. Likewise, for this analysis, because these facilities are assumed not to install compliance technology, EPA also assumed they would achieve no benefits. Accordingly, the benefits reported in this section may be underestimated, based on the assumption of no technology installation for facilities with impoundments.[165] The existing and new unit provisions of today's rule are expected to have total annualized pre-tax (social) costs of $274.9 million. These costs include direct costs incurred by facilities and implementation costs incurred by Federal, State, and local governments. The monetized use and nonuse benefits of the final rule, accounting for the existing and new unit provisions, are estimated to be $32.8 million.[166] EPA notes that these differences are based on a comparison of a partial measure of benefits with a more complete measure of costs; therefore, the results must be interpreted with caution. For a more detailed comparison of the costs and benefits of the final rule, see Chapter 8 of the EA.

[165] This factor in potential underestimation of benefits is separate from other considerations that likely lead to benefits underestimation, as described in this section and in the EA and BA reports.

[166] Both cost and benefit values were annualized over 51 years and discounted at 3 percent. Values include costs and benefits estimated for new units. EPA generated partial estimates of nonuse benefits for resource changes for a species that represents less than one percent of adverse environmental impacts.

EPA notes that States may be able to use existing sources of financial assistance to revise and implement today's rule. CWA section 106 authorizes EPA to award grants to States, Tribes, intertribal consortia, and interstate agencies for administering programs for the prevention, reduction, and elimination of water pollution. These grants may be used for various activities to develop and carry out a water pollution control program, including permitting, monitoring, and enforcement. Thus, State and Tribal NPDES permit programs represent one type of State program that can be funded by CWA section 106 grants.

c. Summary of State, Local, and Tribal Government Input

EPA consulted with State governments and representatives of local governments in developing the rule. The outreach activities are discussed in Section III.A.3 of the preamble to the proposed rule (see 76 FR 22268, April 20, 2011) and Chapter 2 of the TDD. EPA has also conducted additional outreach since the proposed rule, including several conference calls with the Association of Clean Water Administrators (including numerous states) and small business representatives (including some local government officials). EPA also combined its efforts and collected input from State and local government entities during development of the proposed Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, which shares many of the same affected facilities as today's final rule; see 78 FR 34530 (June 7, 2013) for more information. State and local officials attended numerous site visits with

EPA's staff, enabling EPA to gather their input; see DCNs 10–6510, 10–6518, 10–6520, 10–6521, 10–6523 and 10–6524. EPA also responded to requests for information from multiple State and local governments. EPA also attended conferences and participated in workgroups (such as NARUC's 2013 Winter Committee Meetings) where additional information about State and local government interests were presented. Historically, EPA has also conducted a great deal of outreach in developing the previous 316(b) regulations over the past decade; for example, see the Phase I final preamble (66 FR 65331, December 18, 2001), the Phase II final preamble (69 FR 41677, July 9, 2004), and the Phase III final preamble (71 FR 35037, June 16, 2006).

d. Regulatory Option Selected

EPA considered and analyzed several regulatory options to determine the best technology available for minimizing adverse environmental impact. These regulatory options are discussed in Section VI of this preamble. These options included a range of technology-based approaches, from impingement mortality technology at all facilities with a DIF of greater than 50 mgd, to requiring additional impingement mortality controls and intake flow commensurate with closed-cycle cooling for all facilities. As discussed in detail in Section VI, EPA did not select options exclusively because they are the most cost-effective among the options that fulfill the requirements of section 316(b). EPA selected the final rule because it meets the requirement of CWA section 316(b) that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts. In addition, EPA has determined that the benefits of the final rule justify the costs, taking into account quantified and qualitative benefits and costs. EPA selected a flexible approach for the final rule from among the options considered; it allows consideration of costs and benefits on a site-specific basis in determining BTA for reducing entrainment and has flexible requirements for reducing impingement mortality.

2. Impact of Compliance Requirements on Small Governments

This rule is not subject to Unfunded Mandates Reform Act section 203 requirements because it contains no regulatory requirements that could significantly or uniquely affect small governments (i.e., governments with a population of fewer than 50,000). For its assessment of the impact of compliance requirements on small governments, EPA compared the estimated total costs and costs per facility that small governments would incur with the costs that large governments would incur. EPA also compared costs for regulated facilities owned by small-government entities with costs of regulated facilities owned by non-government entities. The Agency evaluated costs per facility on the basis of both average and maximum annualized cost. The costs for facilities owned by small government entities are less than those estimated for facilities owned by large government entities, or owned by small or large non-government entities. EPA interprets these findings to indicate that the final rule will not uniquely or disproportionately affect small governments.

Because no manufacturer is government-owned, EPA conducted this analysis for electric generators only.

a. Government-Owned Electric Generators by Ownership and Entity-Size Category

Exhibit XI–7 provides an estimate of the number of non-Federal government entities that own electric generators, by ownership type and size of government entity. As presented in Exhibit XI–7, large government entities own 45 electric generators, and small government entities own 20 electric generators. Of the 65 facilities owned by government entities, 48 are owned by municipalities, six are owned by States and 11 are owned by other political subdivisions. Tribal governments own no regulated facilities.

EXHIBIT XI–7—NUMBER OF GOVERNMENT-OWNED ELECTRIC GENERATORS, BY SIZE OF GOVERNMENT [a]

Entity type	Large	Small	Total
Municipality	29	19	48
State Government	6	0	6
Other Political Subdivision	10	1	11
Tribal Government	0	0	0
Total	45	20	65

[a] Counts of explicitly and implicitly analyzed electric generators; these are not weighted estimates. For details, see EA Appendix H.

b. Compliance Costs for Electric Generators Owned by Small Government Entities

Exhibit XI–8 presents total, average annualized compliance costs, and maximum annualized compliance costs of the final rule for regulated facilities owned by government (State, local, and Tribal governments) and non-government entities by entity-size category. For the existing unit provision of the final rule, EPA estimates that small government entities will incur a total annualized cost of $2.6 million, compared to the total cost of $8.6 million incurred by large government entities and $8.5 million incurred by small private entities. On a per facility basis, EPA estimates that a facility owned by a small government entity will on average incur a cost of $0.2 million with a maximum of $0.5 million. The Agency estimates that for a facility owned by large government entity, the average cost of the existing provision of the final rule will be $0.2 million per facility with a maximum of $1.3 million, while for a facility owned by a small private entity the average cost will be $0.2 million per facility with a maximum of $1.4 million.[167] Again, overall, EPA concludes that the compliance requirements of the existing unit provision of today's rule do not significantly or uniquely affect small governments in comparison to either large governments or small private entities. For details of this analysis, see the EA Chapter 11.

EXHIBIT XI–8—ELECTRIC GENERATORS AND COMPLIANCE COSTS BY OWNERSHIP TYPE AND SIZE

[In millions, 2011 dollars]

Ownership type	Entity size	Number of facilities (weighted) [a]	Total compliance costs	Average cost per facility [d]	Maximum facility cost [e]
Final Rule:					
Government (excluding Federal)	Small	16	$2.6	$0.2	$0.5

[167] Excluding Federal government entities and regulated facilities they own.

EXHIBIT XI–8—ELECTRIC GENERATORS AND COMPLIANCE COSTS BY OWNERSHIP TYPE AND SIZE—Continued

[In millions, 2011 dollars]

Ownership type	Entity size	Number of facilities (weighted) [a]	Total compliance costs	Average cost per facility [d]	Maximum facility cost [e]
	Large	37	8.6	0.2	1.3
Private [b]	Small	53	8.5	0.2	1.4
	Large	423	184.3	0.4	5.0
All Facilities [c]		544	220	0.4	5.0

[a] Facility counts are weighted estimates and differ from the values reported in Exhibit XI–7, which are un-weighted counts and reflect information for both explicitly and implicitly analyzed electric generators. Sample-weighted values are reported in this table because costs were developed only for the explicitly analyzed electric generators. For details on development of sample weights, see EA Appendix H.
[b] Facility counts and cost estimates reported for the private sector include facilities owned by rural electric cooperatives.
[c] Facility counts and cost estimates reported for All Facilities include facilities owned by the Federal government and costs estimated for these facilities.
[d] EPA calculated average cost per facility using the total number of regulated facilities owned by entities in a given ownership category.
[e] Reflects maximum of un-weighted costs to explicitly analyzed facilities only.

3. Administrative Costs

Section 316(b) requirements are implemented through the NPDES permit program. EPA estimates that 46 States and one territory—the relevant jurisdictions with NPDES permitting authority under CWA section 402(b)—will incur costs to administer the final rule.[168] EPA estimates that States and territories will incur costs for implementing the requirements of today's rule in four activity categories: (1) Start-up activities to learn and understand the requirements of today's regulation and to implement administrative structures and procedures for administering the regulation; (2) initial permit issuance activities; (3) annual activities, including monitoring, reporting and recordkeeping; and (4) non-annually recurring permit-related activities. Exhibit XI–9 presents total annualized costs for each type of administrative activity. EPA estimates that State and local government entities will incur annualized costs of $0.9 million to administer the final rule for electric generators and manufacturers. Monitoring, reporting and recordkeeping costs compose the largest share of administrative costs.

EXHIBIT XI–9—ANNUALIZED GOVERNMENT ADMINISTRATIVE COSTS

[In millions, 2011 dollars]

Activity	Cost		Total
	Electric generators	Manufacturers	
Start-up Activities	NA	NA	[a] $0.0
Initial Permit Issuance Activities	$0.2	$0.2	0.4
Annual Monitoring, Reporting and Recordkeeping Activities	0.2	0.2	0.5
Non-Annually Recurring Permit-Related Activities [b]	[b] 0.0	0.0	0.1
Total	0.5	0.4	0.9

[a] Costs associated with start-up activities are estimated for both electric generators and manufacturers; these costs are less than $20,000.
[b] Costs are less than $50,000.

E. Executive Order 13132: Federalism

Under E.O. 13132, EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs on the State and local governments, 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 EPA consults with State and local officials early in the process of developing the final rule.

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.This final rule would not alter the basic State-Federal scheme established in the CWA under which EPA authorizes States to carry out the NPDES permitting program. Prior to this rule, authorized States were required to issue NPDES permits including requirements for CWISs on a case-by-case BPJ basis. 40 CFR 125.90(b). EPA expects that today's rule will have little to no effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments.

EPA estimates an average annual burden of $0.9 million, for State and local governments to collectively administer the existing unit provision of the final rule.[169] The rule will also impose a compliance cost burden on State and local governments, if those government entities own facilities that are subject to today's rule. EPA has identified 554 regulated facilities that are owned by State or local government entities; the Agency estimates that under the existing unit provision of the final rule these facilities will incur an average annual compliance cost of

[168] Federal government permitting authorities will also incur costs to administer the rule. As stated earlier in this section, consistent with UMRA analysis requirements, EPA did not account for costs to Federal entities in the UMRA analysis.

[169] This estimate does not include costs to administer the new unit provision of the final rule; however, EPA expects these costs to be small.

approximately $0.2 million per facility.[170] Because this rule does not have federalism implications, the requirements of section 6 of E.O. 13132 do not apply to this rule.

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

This action does not have Tribal implications, as specified in E.O. 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and the Tribes, or the distribution of power and responsibilities between the Federal government and Tribes as specified in E.O. 13175. The national cooling water intake structure standards would be implemented through permits issued under the NPDES program. No Tribal governments are authorized pursuant to CWA section 402(b) to implement the NPDES program. In addition, EPA's analyses show that Tribal governments own no facilities subject to today's rule; thus, this rule does not affect Tribes in any way now or in the foreseeable future. Thus, E.O. 13175 does not apply to this action.

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

This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule establishes requirements for cooling water intake structures to protect the environment.

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

E.O. 13211 (66 FR 28355, May 22, 2001) requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for actions identified as *significant energy actions*. On the basis of the Office of Management and Budget's guidance for assessing the potential energy impact of regulations, the Agency anticipates that today's rule may have a significant adverse effect on the supply, distribution, or use of energy, thus requiring EPA to include a Statement of Energy Effects.

The Agency assessed the energy effects of today's rule, specifically, the rule's effect on energy supply, distribution or use in the electric power sector, as required under E.O. 13211. In its energy-effects assessment, EPA relied on Integrated Planning Model (IPM) analyses undertaken by EPA for the final rule. Based on that analysis, described in Section IX(D)(1)(d) of this preamble (Assessment of the Impacts in the Context of Electricity Markets) and in more detail in Chapter 6 of the EA report, EPA finds that the compliance requirements of the final rule may affect the electric power sector in ways that would constitute a significant adverse effect under E.O. 13211, and thus includes a Statement of Energy Effects in the economic analysis.

The Agency's analysis found that the final rule will not reduce electricity production in excess of 1 billion kWh hours per year (or one thousand GWh), will not increase the cost of energy production in excess of 1 percent, will not increase dependence on foreign supply of energy, and will not significantly affect domestic coal production. However, the final rule will result in net retirement of 998 MW of generating capacity, which exceeds 500 MW of installed capacity, the threshold of significant adverse effect identified in the OMB Implementation Guidance for E.O. 13211. EPA notes that, with only one exception, these retirements involve older, less efficient generating units with very low capacity utilization rates. The 998 MW of net retired capacity is replaced by 589 MW of new capacity; therefore, because older and less efficient capacity is replaced by new, more energy-efficient, and less polluting capacity, these retirements mean that 409 MW less capacity is needed to fulfill the same demand.

For more detail on the estimated energy effects of the final rule, see Chapter 12 of the EA, which is in the public docket.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA 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. The National Technology Transfer and Advancement Act directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking may involve technical standards, for example, in measuring impingement and entrainment. Nothing in this final rule would prevent the use of voluntary consensus standards for such measurements. EPA encourages permitting authorities and regulated entities to use voluntary consensus standards, where they are available.

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

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

EPA has determined that today's rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Specifically, the final rule increases the level of environmental protection for all affected populations and has no high and adverse human health or environmental effects on any population, including any minority or low-income population. Because EPA expects that this final rule will help to preserve the health of aquatic ecosystems near regulated facilities, EPA expects that all populations, including minority and low-income populations, will benefit from improved environmental conditions.

To meet the objectives of E.O. 12898, EPA assessed whether today's rule could distribute benefits among population subgroups in a way that is significantly less favorable to low-income and minority populations. EPA compared key demographic characteristics of affected substate populations to those demographic characteristics at the State level. If EPA had found that the demographic profile of the substate *benefit population* is composed of a significantly lower share of low-income and/or minority populations than the State's general population, EPA might have assessed the final rule as yielding an unfavorable

[170] Cost values were calculated over the 51-year analysis period used for analysis of social costs, discounted and annualized using a rate of 7 percent (see EA Chapters 7 and 11).

distribution of benefits, from the perspective of the public policy principles of E.O. 12898. The two sets of demographic variables of interest for this environmental justice analysis are race and ethnicity, and annual household income, which are the variables in the Fish Consumption Pathway Module that best capture the minority and low-income aspects of the affected populations.[171] [172] EPA compared variable averages at the substate and State levels to determine whether the demographic profile of the affected population is consistent with the State profile (for details, see EA Chapter 12).

The comparison of minority populations affected by the regulated facilities to the affected States' overall populations showed no statistically significant difference between these groups. While low-income populations constitute a lower fraction of the benefit population than of the State's overall population in many States, the two groups are not significantly different. EPA thus determined that the final rule does not systematically discriminate against, or exclude or deny participation of, the lower income population group or the minority population group in the benefits of the final rule in a way that would be contrary to the intent of E.O. 12898. Overall, EPA thus concluded that the final rule is consistent with the policy intent of E.O. 12898. Anecdotally, minority (e.g., Native American) and low-income populations might be more likely to include a larger proportion of subsistence fishermen. Because this rule will increase abundance of all fish species in the areas affected by cooling water intakes, it might provide a benefit to subsistence fishermen. To the extent that minority and low-income populations are over-represented in this group, they might especially benefit from this rule.

[171] Annual household income data in the FCP Module are available for the following categories: less than $10,000; $10,000 to $19,999; $20,000 to $24,999; $25,000 to $29,999; $30,000 to $34,999; $35,000 to $39,999; $40,000 to $49,999; $50,000 to $74,999; $75,000 to $99,999; and more than $100,000. For this analysis and previous 316(b) rule analyses, these categories were combined into low- and *not* low-income groups based on the U.S. Department of Health and Human Services' poverty guidelines for a family of four living in the contiguous United States or DC The current (2013) poverty guideline is $23,550, which falls near the upper end of the $20,000 to $24,999 income range (U.S. HHS, 2013). For the current analysis, EPA used $25,000 as the threshold for separating populations into low- and *not* low-income groups.

[172] Race and ethnic categories used in the analysis include white non-Hispanic, white Hispanic, black or African American, Asian or Native Hawaiian or Other Pacific Island, and American Indian and Alaska Native.

K. Executive Order 13158: Marine Protected Areas

E.O. 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of this executive order is to protect significant natural and cultural resources in the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

Today's rule recognizes the biological sensitivity of tidal rivers, estuaries, oceans, and the Great Lakes, and their susceptibility to adverse environmental impacts from cooling water intake structures. The rule provides requirements to minimize adverse environmental impacts for cooling water intake structures on these types of waterbodies.

EPA used GIS data of the locations of MPAs (Marine Protected Areas) from the national MPA program (*http://www.mpa.gov/helpful_resources/inventory.html*) to locate regulated facilities in MPAs. Under the final rule, 60 percent of regulated facilities in MPAs obtain reductions in impingement mortality. As noted above, because of EPA's assumption that facilities with impoundments will not need to install compliance technology, this may be an underestimate. EPA cannot estimate reductions in entrainment because they would be based on site-specific determinations of BTA. Therefore, EPA expects that today's rule will advance the objective of the executive order to protect marine areas. For more details on this analysis and analysis results, see BA Chapter 8.

L. 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 is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 14, 2014.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 19, 2014.

Gina McCarthy,

Administrator.

For reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. The suspension of 40 CFR 122.21(r)(1)(ii) and (r)(5), published on July 9, 2007 (72 FR 37109) is lifted.

■ 3. Section 122.21 is amended as follows:

■ a. Revising paragraph (r)(1).

■ b. Adding paragraphs (r)(4)(ix) through (xii).

■ c. Revising paragraph (r)(5).

■ d. Adding paragraphs (r)(6) through (14).

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(r) * * *

(1) * * *

(i) *New facilities with new or modified cooling water intake structures.* New facilities (other than offshore oil and gas extraction facilities) with cooling water intake structures as defined in part 125, subpart I of this chapter, must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) (except (r)(4)(ix), (x), (xi), and (xii)) of this section and § 125.86 of this chapter as part of the

permit application. New offshore oil and gas extraction facilities with cooling water intake structures as defined in part 125, subpart N, of this chapter that are fixed facilities must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) (except (r)(4)(ix), (x), (xi), and (xii)) of this section and § 125.136 of this chapter as part of their permit application.

(ii) *Existing facilities.* (A) *All existing facilities.* The owner or operator of an existing facility defined at 40 CFR 125.92(k) must submit to the Director for review the information required under paragraphs (r)(2) and (3) of this section and applicable provisions of paragraphs (r)(4), (5), (6), (7), and (8) of this section.

(B) *Existing facilities greater than 125 mgd AIF.* In addition, the owner or operator of an existing facility that withdraws greater than 125 mgd actual intake flow (AIF), as defined at 40 CFR 125.92 (a), of water for cooling purposes must also submit to the Director for review the information required under paragraphs (r)(9), (10), (11), (12), and (13) of this section. If the owner or operator of an existing facility intends to comply with the BTA (best technology available) standards for entrainment using a closed-cycle recirculating system as defined at 40 CFR 125.92(c), the Director may reduce or waive some or all of the information required under paragraphs (r)(9) through (13) of this section.

(C) *Additional information.* The owner or operator of an existing facility must also submit such additional information as the Director determines is necessary pursuant to 40 CFR 125.98(i).

(D) *New units at existing facilities.* The owner or operator of a new unit at an existing facility, as defined at 40 CFR 125.92(u), must submit or update any information previously provided to the Director by submitting the information required under paragraphs (r)(2), (3), (5), (8), and (14) of this section and applicable provisions of paragraphs (r)(4), (6), and (7) of this section. Requests for and approvals of alternative requirements sought under 40 CFR 125.94(e)(2) or 125.98(b)(7) must be submitted with the permit application.

(E) *New units at existing facilities not previously subject to Part 125.* The owner or operator of a new unit as defined at 40 CFR 125.92(u) at an existing facility not previously subject to part 125 of this chapter that increases the total capacity of the existing facility to more than 2 mgd DIF must submit the information required under paragraphs (r)(2), (3), (5), and (8) of this section and applicable provisions of paragraphs (r)(4), (6), and (7) of this section at the time of the permit application for the new unit. Requests for alternative requirements under 40 CFR 125.94(e)(2) or 125.98(b)(7) must be submitted with the permit application. If the total capacity of the facility will increase to more than 125 mgd AIF, the owner or operator must also submit the information required in paragraphs (r)(9) through (13) of this section. If the owner or operator of an existing facility intends to comply with the BTA (best technology available) standards for entrainment using a closed-cycle recirculating system as defined at 40 CFR 125.92(c), the Director may reduce or waive some or all of the information required under paragraphs (r)(9) through (13) of this section.

(F) If the owner or operator of an existing facility plans to retire the facility before the current permit expires, then the requirements of paragraphs (r)(1)(ii)(A), (B), (C), (D), and (E) of this section do not apply.

(G) If the owner or operator of an existing facility plans to retire the facility after the current permit expires but within one permit cycle, then the Director may waive the requirements of paragraphs (r)(7), (9), (10), (11), (12), and (13) of this section pending a signed certification statement from the owner or operator of the facility specifying the last operating date of the facility.

(H) *All facilities.* The owner or operator of any existing facility or new unit at any existing facility must also submit with its permit application all information received as a result of any communication with a Field Office of the Fish and Wildlife Service and/or Regional Office of the National Marine Fisheries Service.

* * * * *

(4) * * *

(ix) In the case of the owner or operator of an existing facility or new unit at an existing facility, the *Source Water Baseline Biological Characterization Data* is the information in paragraphs (r)(4)(i) through (xii) of this section.

(x) For the owner or operator of an existing facility, identification of protective measures and stabilization activities that have been implemented, and a description of how these measures and activities affected the baseline water condition in the vicinity of the intake.

(xi) For the owner or operator of an existing facility, a list of fragile species, as defined at 40 CFR 125.92(m), at the facility. The applicant need only identify those species not already identified as fragile at 40 CFR 125.92(m). New units at an existing facility are not required to resubmit this information if the cooling water withdrawals for the operation of the new unit are from an existing intake.

(xii) For the owner or operator of an existing facility that has obtained incidental take exemption or authorization for its cooling water intake structure(s) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, any information submitted in order to obtain that exemption or authorization may be used to satisfy the permit application information requirement of paragraph 40 CFR 125.95(f) if included in the application.

(5) *Cooling Water System Data.* The owner or operator of an existing facility must submit the following information for each cooling water intake structure used or intended to be used:

(i) A narrative description of the operation of the cooling water system and its relationship to cooling water intake structures; the proportion of the design intake flow that is used in the system; the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; the proportion of design intake flow for contact cooling, non-contact cooling, and process uses; a distribution of water reuse to include cooling water reused as process water, process water reused for cooling, and the use of gray water for cooling; a description of reductions in total water withdrawals including cooling water intake flow reductions already achieved through minimized process water withdrawals; a description of any cooling water that is used in a manufacturing process either before or after it is used for cooling, including other recycled process water flows; the proportion of the source waterbody withdrawn (on a monthly basis);

(ii) Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by paragraph (r)(5)(i) of this section; and

(iii) Description of existing impingement and entrainment technologies or operational measures and a summary of their performance, including but not limited to reductions in impingement mortality and entrainment due to intake location and reductions in total water withdrawals and usage.

(6) *Chosen Method(s) of Compliance with Impingement Mortality Standard.* The owner or operator of the facility must identify the chosen compliance

method for the entire facility; alternatively, the applicant must identify the chosen compliance method for each cooling water intake structure at its facility. The applicant must identify any intake structure for which a BTA determination for Impingement Mortality under 40 CFR 125.94 (c)(11) or (12) is requested. In addition, the owner or operator that chooses to comply via 40 CFR 125.94 (c)(5) or (6) must also submit an *impingement technology performance optimization study* as described below:

(i) If the applicant chooses to comply with 40 CFR 125.94(c)(5), subject to the flexibility for timing provided in 40 CFR 125.95(a)(2), the *impingement technology performance optimization study* must include two years of biological data collection measuring the reduction in impingement mortality achieved by the modified traveling screens as defined at 40 CFR 125.92(s) and demonstrating that the operation has been optimized to minimize impingement mortality. A complete description of the modified traveling screens and associated equipment must be included, including, for example, type of mesh, mesh slot size, pressure sprays and fish return mechanisms. A description of any biological data collection and data collection approach used in measuring impingement mortality must be included:

(A) Collecting data no less frequently than monthly. The Director may establish more frequent data collection;

(B) Biological data collection representative of the impingement and the impingement mortality at the intakes subject to this provision;

(C) A taxonomic identification to the lowest taxon possible of all organisms collected;

(D) The method in which naturally moribund organisms are identified and taken into account;

(E) The method in which mortality due to holding times is taken into account;

(F) If the facility entraps fish or shellfish, a count of entrapment, as defined at 40 CFR 125.92(j), as impingement mortality; and

(G) The percent impingement mortality reflecting optimized operation of the modified traveling screen and all supporting calculations.

(ii) If the applicant chooses to comply with 40 CFR 125.94(c)(6), the *impingement technology performance optimization study* must include biological data measuring the reduction in impingement mortality achieved by operation of the system of technologies, operational measures and best management practices, and demonstrating that operation of the system has been optimized to minimize impingement mortality. This system of technologies, operational measures and best management practices may include flow reductions, seasonal operation, unit closure, credit for intake location, and behavioral deterrent systems. The applicant must document how each system element contributes to the system's performance. The applicant must include a minimum of two years of biological data measuring the reduction in impingement mortality achieved by the system. The applicant must also include a description of any sampling or data collection approach used in measuring the rate of impingement, impingement mortality, or flow reductions.

(A) *Rate of Impingement.* If the demonstration relies in part on a credit for reductions in the rate of impingement in the system, the applicant must provide an estimate of those reductions to be used as credit towards reducing impingement mortality, and any relevant supporting documentation, including previously collected biological data, performance reviews, and previously conducted performance studies not already submitted to the Director. The submission of studies more than 10 years old must include an explanation of why the data are still relevant and representative of conditions at the facility and explain how the data should be interpreted using the definitions of impingement and entrapment at 40 CFR 125.92(n) and (j), respectively. The estimated reductions in rate of impingement must be based on a comparison of the system to a once-through cooling system with a traveling screen whose point of withdrawal from the surface water source is located at the shoreline of the source waterbody. For impoundments that are waters of the United States in whole or in part, the facility's rate of impingement must be measured at a location within the cooling water intake system that the Director deems appropriate. In addition, the applicant must include two years of biological data collection demonstrating the rate of impingement resulting from the system. For this demonstration, the applicant must collect data no less frequently than monthly. The Director may establish more frequent data collection.

(B) *Impingement Mortality.* If the demonstration relies in part on a credit for reductions in impingement mortality already obtained at the facility, the applicant must include two years of biological data collection demonstrating the level of impingement mortality the system is capable of achieving. The applicant must submit any relevant supporting documentation, including previously collected biological data, performance reviews, and previously conducted performance studies not already submitted to the Director. The applicant must provide a description of any sampling or data collection approach used in measuring impingement mortality. In addition, for this demonstration the applicant must:

(*1*) Collect data no less frequently than monthly. The Director may establish more frequent data collection;

(*2*) Conduct biological data collection that is representative of the impingement and the impingement mortality at an intake subject to this provision. In addition, the applicant must describe how the location of the cooling water intake structure in the waterbody and the water column are accounted for in the points of data collection;

(*3*) Include a taxonomic identification to the lowest taxon possible of all organisms to be collected;

(*4*) Describe the method in which naturally moribund organisms are identified and taken into account;

(*5*) Describe the method in which mortality due to holding times is taken into account; and

(*6*) If the facility entraps fish or shellfish, a count of the entrapment, as defined at 40 CFR 125.92(j), as impingement mortality.

(C) *Flow reduction.* If the demonstration relies in part on flow reduction to reduce impingement, the applicant must include two years of intake flows, measured daily, as part of the demonstration, and describe the extent to which flow reductions are seasonal or intermittent. The applicant must document how the flow reduction results in reduced impingement. In addition, the applicant must describe how the reduction in impingement has reduced impingement mortality.

(D) *Total system performance.* The applicant must document the percent impingement mortality reflecting optimized operation of the total system of technologies, operational measures, and best management practices and all supporting calculations. The total system performance is the combination of the impingement mortality performance reflected in paragraphs (r)(6)(ii)(A), (B), and (C) of this section.

(*7*) *Entrainment Performance Studies.* The owner or operator of an existing facility must submit any previously conducted studies or studies obtained from other facilities addressing technology efficacy, through-facility entrainment survival, and other

entrainment studies. Any such submittals must include a description of each study, together with underlying data, and a summary of any conclusions or results. Any studies conducted at other locations must include an explanation as to why the data from other locations are relevant and representative of conditions at your facility. In the case of studies more than 10 years old, the applicant must explain why the data are still relevant and representative of conditions at the facility and explain how the data should be interpreted using the definition of entrainment at 40 CFR 125.92(h).

(8) *Operational Status.* The owner or operator of an existing facility must submit a description of the operational status of each generating, production, or process unit that uses cooling water, including but not limited to:

(i) For power production or steam generation, descriptions of individual unit operating status including age of each unit, capacity utilization rate (or equivalent) for the previous 5 years, including any extended or unusual outages that significantly affect current data for flow, impingement, entrainment, or other factors, including identification of any operating unit with a capacity utilization rate of less than 8 percent averaged over a 24-month block contiguous period, and any major upgrades completed within the last 15 years, including but not limited to boiler replacement, condenser replacement, turbine replacement, or changes to fuel type;

(ii) Descriptions of completed, approved, or scheduled uprates and Nuclear Regulatory Commission relicensing status of each unit at nuclear facilities;

(iii) For process units at your facility that use cooling water other than for power production or steam generation, if you intend to use reductions in flow or changes in operations to meet the requirements of 40 CFR 125.94(c), descriptions of individual production processes and product lines, operating status including age of each line, seasonal operation, including any extended or unusual outages that significantly affect current data for flow, impingement, entrainment, or other factors, any major upgrades completed within the last 15 years, and plans or schedules for decommissioning or replacement of process units or production processes and product lines;

(iv) For all manufacturing facilities, descriptions of current and future production schedules; and

(v) Descriptions of plans or schedules for any new units planned within the next 5 years.

(9) *Entrainment Characterization Study.* The owner or operator of an existing facility that withdraws greater than 125 mgd AIF, where the withdrawal of cooling water is measured at a location within the cooling water intake structure that the Director deems appropriate, must develop for submission to the Director an *Entrainment Characterization Study* that includes a minimum of two years of entrainment data collection. The Entrainment Characterization Study must include the following components:

(i) *Entrainment Data Collection Method.* The study should identify and document the data collection period and frequency. The study should identify and document organisms collected to the lowest taxon possible of all life stages of fish and shellfish that are in the vicinity of the cooling water intake structure(s) and are susceptible to entrainment, including any organisms identified by the Director, and any species protected under Federal, State, or Tribal law, including threatened or endangered species with a habitat range that includes waters in the vicinity of the cooling water intake structure. Biological data collection must be representative of the entrainment at the intakes subject to this provision. The owner or operator of the facility must identify and document how the location of the cooling water intake structure in the waterbody and the water column are accounted for by the data collection locations;

(ii) *Biological Entrainment Characterization.* Characterization of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal law (including threatened or endangered species), including a description of their abundance and their temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in entrainment, including but not limited to variations related to climate and weather differences, spawning, feeding, and water column migration. This characterization may include historical data that are representative of the current operation of the facility and of biological conditions at the site. Identification of all life stages of fish and shellfish must include identification of any surrogate species used, and identification of data representing both motile and non-motile life-stages of organisms;

(iii) *Analysis and Supporting Documentation.* Documentation of the current entrainment of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal law (including threatened or endangered species). The documentation may include historical data that are representative of the current operation of the facility and of biological conditions at the site. Entrainment data to support the facility's calculations must be collected during periods of representative operational flows for the cooling water intake structure, and the flows associated with the data collection must be documented. The method used to determine latent mortality along with data for specific organism mortality or survival that is applied to other life-stages or species must be identified. The owner or operator of the facility must identify and document all assumptions and calculations used to determine the total entrainment for that facility together with all methods and quality assurance/quality control procedures for data collection and data analysis. The proposed data collection and data analysis methods must be appropriate for a quantitative survey.

(10) *Comprehensive Technical Feasibility and Cost Evaluation Study.* The owner or operator of an existing facility that withdraws greater than 125 mgd AIF must develop for submission to the Director an engineering study of the technical feasibility and incremental costs of candidate entrainment control technologies. In addition, the study must include the following:

(i) *Technical feasibility.* An evaluation of the technical feasibility of closed-cycle recirculating systems as defined at 40 CFR 125.92(c), fine mesh screens with a mesh size of 2 millimeters or smaller, and water reuse or alternate sources of cooling water. In addition, this study must include:

(A) A description of all technologies and operational measures considered (including alternative designs of closed-cycle recirculating systems such as natural draft cooling towers, mechanical draft cooling towers, hybrid designs, and compact or multi-cell arrangements);

(B) A discussion of land availability, including an evaluation of adjacent land and acres potentially available due to generating unit retirements, production unit retirements, other buildings and equipment retirements, and potential for repurposing of areas devoted to ponds, coal piles, rail yards, transmission yards, and parking lots;

(C) A discussion of available sources of process water, grey water, waste water, reclaimed water, or other waters of appropriate quantity and quality for use as some or all of the cooling water needs of the facility; and

(D) Documentation of factors other than cost that may make a candidate

technology impractical or infeasible for further evaluation.

(ii) *Other entrainment control technologies.* An evaluation of additional technologies for reducing entrainment may be required by the Director.

(iii) *Cost evaluations.* The study must include engineering cost estimates of all technologies considered in paragraphs (r)(10)(i) and (ii) of this section. Facility costs must also be adjusted to estimate social costs. All costs must be presented as the net present value (NPV) and the corresponding annual value. Costs must be clearly labeled as compliance costs or social costs. The applicant must separately discuss facility level compliance costs and social costs, and provide documentation as follows:

(A) Compliance costs are calculated as after-tax, while social costs are calculated as pre-tax. Compliance costs include the facility's administrative costs, including costs of permit application, while the social cost adjustment includes the Director's administrative costs. Any outages, downtime, or other impacts to facility net revenue, are included in compliance costs, while only that portion of lost net revenue that does not accrue to other producers can be included in social costs. Social costs must also be discounted using social discount rates of 3 percent and 7 percent. Assumptions regarding depreciation schedules, tax rates, interest rates, discount rates and related assumptions must be identified;

(B) Costs and explanation of any additional facility modifications necessary to support construction and operation of technologies considered in paragraphs (r)(10)(i) and (ii) of this section, including but not limited to relocation of existing buildings or equipment, reinforcement or upgrading of existing equipment, and additional construction and operating permits. Assumptions regarding depreciation schedules, interest rates, discount rates, useful life of the technology considered, and any related assumptions must be identified; and

(C) Costs and explanation for addressing any non-water quality environmental and other impacts identified in paragraph (r)(12) of this section. The cost evaluation must include a discussion of all reasonable attempts to mitigate each of these impacts.

(11) *Benefits Valuation Study.* The owner or operator of an existing facility that withdraws greater than 125 mgd AIF must develop for submission to the Director an evaluation of the benefits of the candidate entrainment reduction technologies and operational measures evaluated in paragraph (r)(10) of this section including using the Entrainment Characterization Study completed in paragraph (r)(9) of this section. Each category of benefits must be described narratively, and when possible, benefits should be quantified in physical or biological units and monetized using appropriate economic valuation methods. The benefits valuation study must include, but is not limited to, the following elements:

(i) Incremental changes in the numbers of individual fish and shellfish lost due to impingement mortality and entrainment as defined in 40 CFR 125.92, for all life stages of each exposed species;

(ii) Description of basis for any estimates of changes in the stock sizes or harvest levels of commercial and recreational fish or shellfish species or forage fish species;

(iii) Description of basis for any monetized values assigned to changes in the stock size or harvest levels of commercial and recreational fish or shellfish species, forage fish, and to any other ecosystem or non use benefits;

(iv) A discussion of mitigation efforts completed prior to October 14, 2014 including how long they have been in effect and how effective they have been;

(v) Discussion, with quantification and monetization, where possible, of any other benefits expected to accrue to the environment and local communities, including but not limited to improvements for mammals, birds, and other organisms and aquatic habitats;

(vi) Discussion, with quantification and monetization, where possible, of any benefits expected to result from any reductions in thermal discharges from entrainment technologies.

(12) *Non-water Quality Environmental and Other Impacts Study.* The owner or operator of an existing facility that withdraws greater than 125 mgd AIF must develop for submission to the Director a detailed facility-specific discussion of the changes in non-water quality environmental and other impacts attributed to each technology and operational measure considered in paragraph (r)(10) of this section, including both impacts increased and impacts decreased. The study must include the following:

(i) Estimates of changes to energy consumption, including but not limited to auxiliary power consumption and turbine backpressure energy penalty;

(ii) Estimates of air pollutant emissions and of the human health and environmental impacts associated with such emissions;

(iii) Estimates of changes in noise;

(iv) A discussion of impacts to safety, including documentation of the potential for plumes, icing, and availability of emergency cooling water;

(v) A discussion of facility reliability, including but not limited to facility availability, production of steam, impacts to production based on process unit heating or cooling, and reliability due to cooling water availability;

(vi) Significant changes in consumption of water, including a facility-specific comparison of the evaporative losses of both once-through cooling and closed-cycle recirculating systems, and documentation of impacts attributable to changes in water consumption; and

(vii) A discussion of all reasonable attempts to mitigate each of these factors.

(13) *Peer Review.* If the applicant is required to submit studies under paragraphs (r)(10) through (12) of this section, the applicant must conduct an external peer review of each report to be submitted with the permit application. The applicant must select peer reviewers and notify the Director in advance of the peer review. The Director may disapprove of a peer reviewer or require additional peer reviewers. The Director may confer with EPA, Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure, independent system operators, and state public utility regulatory agencies, to determine which peer review comments must be addressed. The applicant must provide an explanation for any significant reviewer comments not accepted. Peer reviewers must have appropriate qualifications and their names and credentials must be included in the peer review report.

(14) *New Units.* The applicant must identify the chosen compliance method for the new unit. In addition, the owner or operator that selects the BTA standards for new units at 40 CFR 125.94 (e)(2) as its route to compliance must submit information to demonstrate entrainment reductions equivalent to 90 percent or greater of the reduction that could be achieved through compliance with 40 CFR 125.94(e)(1). The demonstration must include the Entrainment Characterization Study at paragraph (r)(9) of this section. In addition, if data specific to your facility indicates that compliance with the requirements of § 125.94 of this chapter for each new unit would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at

issue, or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets, you must submit all supporting data as part of paragraph (r)(14) of this section. The Director may determine that additional data and information, including but not limited to monitoring, must be included as part of paragraph (r)(14) of this section.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 4. The authority citation for part 125 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.,* unless otherwise noted.

Subpart I—[Amended]

■ 5. Section 125.84 is amended by revising paragraphs (c) introductory text and (d)(1) to read as follows:

§ 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?

* * * * *

(c) *Track I requirements for new facilities that withdraw greater than 2 mgd and less than 10 mgd and that choose not to comply with paragraph (b) of this section.* You must comply with all the following requirements:

* * * * *

(d) * * *

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a level comparable to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section. The Director will consider information provided by any fishery management agency and may also consider data and information from other sources.

* * * * *

■ 6. Section 125.86 is amended as follows:

■ a. Revise paragraphs (a)(1)(ii), (b)(3) introductory text, and (b)(4)(iii) introductory text.

■ b. Remove and reserve paragraphs (c)(2)(ii), (c)(2)(iv)(C), and (c)(2)(iv)(D)(*2*).

§ 125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(a) * * *

(1) * * *

(ii) The Track I requirements for new facilities that withdraw greater than 2 mgd and less than 10 mgd in § 125.84(c);

* * * * *

(b) * * *

(3) *Source waterbody flow information.* You must submit to the Director the following information to demonstrate that your cooling water intake structure meets the flow requirements in § 125.84(b)(3) or (c)(2).

* * * * *

(4) * * *

(iii) The owner or operator of a new facility required to install design and construction technologies and/or operational measures must develop a plan which explains the technologies and measures selected; this plan shall be based on information collected for the Source Water Biological Baseline Characterization required by 40 CFR 122.21(r)(4). Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, and continuous operations of screens, etc. The plan must contain the following information:

* * * * *

■ 7. Section 125.87 is amended by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 125.87 As an owner or operator of a new facility, must I perform monitoring?

* * * * *

(a) *Biological monitoring.* You must monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required by § 125.86(c)(2), depending on whether you chose to comply with Track I or Track II. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization data required in 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required by § 125.86(c)(2). You must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if the Director determines the supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained.

* * * * *

(2) *Entrainment sampling.* You must collect samples at least biweekly to monitor entrainment rates (simple enumeration) for each species over a 24-hour period during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required in § 125.86(c)(2). You must collect samples only when the cooling water intake structure is in operation.

* * * * *

■ 8. Section 125.89 is amended by revising paragraphs (a) introductory text and (b)(1)(i) and (ii) to read as follows:

§ 125.89 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Permit application.* As the Director, you must review materials submitted by the applicant under 40 CFR 122.21(r)(4) and § 125.86 at the time of the initial permit application and before each permit renewal or reissuance.

* * * * *

(b) * * *

(1) * * *

(i) If an owner or operator of a facility chooses Track I, you must review the Design and Construction Technology Plan required in § 125.86(b)(4) to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and entrainment of all life stages of fish and shellfish. In the first permit issued, you must put a condition requiring the facility to reduce impingement mortality and entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the Director must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed to minimize impingement mortality and entrainment

of all life stages of fish and shellfish. In addition, you must consider whether more stringent conditions are reasonably necessary in accordance with § 125.84(e).

(ii) If an owner or operator of a facility chooses Track II, you must review the information submitted with the Comprehensive Demonstration Study required in § 125.86(c)(2) and evaluate the suitability of the proposed design and construction technologies and operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, you must review the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D) and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in § 125.84(d)(1). Under subsequent permits, the Director must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of § 125.84(b)(1) and (2).

* * * * *

■ 9. The suspension of 40 CFR 125.90(a), (c), and (d), and 125.91 through 125.99, published on July 9, 2007 (72 FR 37109) is lifted.

■ 10. Subpart J to part 125 is revised to read as follows:

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Existing Facilities Under Section 316(b) of the Clean Water Act

Sec.

125.90 Purpose of this subpart.
125.91 Applicability.
125.92 Special definitions.
125.93 [Reserved]
125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?
125.95 Permit application and supporting information requirements.
125.96 Monitoring requirements.
125.97 Other permit reporting and recordkeeping requirements.
125.98 Director requirements.
125.99 [Reserved]

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Existing Facilities Under Section 316(b) of the Clean Water Act

§ 125.90 Purpose of this subpart.

(a) This subpart establishes the section 316(b) requirements that apply to cooling water intake structures at existing facilities that are subject to this subpart. These requirements include a number of components. These include standards for minimizing adverse environmental impact associated with the use of cooling water intake structures and required procedures (e.g., permit application requirements, information submission requirements) for establishing the appropriate technology requirements at certain specified facilities as well as monitoring, reporting, and recordkeeping requirements to demonstrate compliance. In combination, these components represent the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures at existing facilities. These requirements are to be established and implemented in National Pollutant Discharge Elimination System (NPDES) permits issued under the Clean Water Act (CWA).

(b) Cooling water intake structures not subject to requirements under §§ 125.94 through 125.99 or subparts I or N of this part must meet requirements under section 316(b) of the CWA established by the Director on a case-by-case, best professional judgment (BPJ) basis.

(c) Nothing in this subpart shall be construed to preclude or deny the right under section 510 of the CWA of any State or political subdivision of a State or any interstate agency to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than required by Federal law.

Note to § 125.90. This regulation does not authorize take, as defined by the Endangered Species Act, 16 U.S.C. 1532(19). The U.S. Fish and Wildlife Service and National Marine Fisheries Service have determined that any impingement (including entrapment) or entrainment of Federally-listed species constitutes take. Such take may be authorized pursuant to the conditions of a permit issued under 16 U.S.C. 1539(a) or where consistent with an Incidental Take Statement contained in a Biological Opinion pursuant to 16 U.S.C. 1536(o).

§ 125.91 Applicability.

(a) The owner or operator of an existing facility, as defined in § 125.92(k), is subject to the requirements at §§ 125.94 through 125.99 if:

(1) The facility is a point source;

(2) The facility uses or proposes to use one or more cooling water intake structures with a cumulative design intake flow (DIF) of greater than 2 million gallons per day (mgd) to withdraw water from waters of the United States; and

(3) Twenty-five percent or more of the water the facility withdraws on an actual intake flow basis is used exclusively for cooling purposes.

(b) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the independent supplier withdraws water from waters of the United States but is not itself a new or existing facility as defined in subparts I or J of this part, except as provided in paragraphs (c) and (d) of this section. An owner or operator of an existing facility may not circumvent these requirements by creating arrangements to receive cooling water from an entity that is not itself a facility subject to subparts I or J of this part.

(c) Obtaining cooling water from a public water system, using reclaimed water from wastewater treatment facilities or desalination plants, or recycling treated process wastewater effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this subpart.

(d) This subpart does not apply to offshore seafood processing facilities, offshore liquefied natural gas terminals, and offshore oil and gas extraction facilities that are existing facilities as defined in § 125.92(k). The owners and operators of such facilities must meet requirements established by the Director on a case-by-case, best professional judgment (BPJ) basis.

§ 125.92 Special definitions.

In addition to the definitions provided in 40 CFR 122.2, the following special definitions apply to this subpart:

(a) *Actual Intake Flow* (AIF) means the average volume of water withdrawn on an annual basis by the cooling water intake structures over the past three years. After October 14, 2019, *Actual Intake Flow* means the average volume of water withdrawn on an annual basis by the cooling water intake structures over the previous five years. Actual intake flow is measured at a location within the *cooling water intake*

structure that the Director deems appropriate. The calculation of actual intake flow includes days of zero flow. AIF does not include flows associated with emergency and fire suppression capacity.

(b) *All life stages of fish and shellfish* means eggs, larvae, juveniles, and adults. It does not include members of the infraclass Cirripedia in the subphylum Crustacea (barnacles), green mussels (*Perna viridis*), or zebra mussels (*Dreissena polymorpha*). The Director may determine that all life stages of fish and shellfish does not include other specified nuisance species.

(c) *Closed-cycle recirculating system* means a system designed and properly operated using minimized make-up and blowdown flows withdrawn from a water of the United States to support contact or non-contact cooling uses within a facility, or a system designed to include certain impoundments. A closed-cycle recirculating system passes cooling water through the condenser and other components of the cooling system and reuses the water for cooling multiple times.

(1) *Closed-cycle recirculating system* includes a facility with wet, dry, or hybrid cooling towers, a system of impoundments that are not waters of the United States, or any combination thereof. A properly operated and maintained closed-cycle recirculating system withdraws new source water (make-up water) only to replenish losses that have occurred due to blowdown, drift, and evaporation. If waters of the United States are withdrawn for purposes of replenishing losses to a closed-cycle recirculating system other than those due to blowdown, drift, and evaporation from the cooling system, the Director may determine a cooling system is a closed-cycle recirculating system if the facility demonstrates to the satisfaction of the Director that make-up water withdrawals attributed specifically to the cooling portion of the cooling system have been minimized.

(2) *Closed-cycle recirculating system* also includes a system with impoundments of waters of the U.S. where the impoundment was constructed prior to October 14, 2014 and created for the purpose of serving as part of the cooling water system as documented in the project purpose statement for any required Clean Water Act section 404 permit obtained to construct the impoundment. In the case of an impoundment whose construction pre-dated the CWA requirement to obtain a section 404 permit, documentation of the project's purpose must be demonstrated to the satisfaction of the Director. This documentation could be some other license or permit obtained to lawfully construct the impoundment for the purposes of a cooling water system, or other such evidence as the Director finds necessary. For impoundments constructed in uplands or not in waters of the United States, no documentation of a section 404 or other permit is required. If waters of the United States are withdrawn for purposes of replenishing losses to a closed-cycle recirculating system other than those due to blowdown, drift, and evaporation from the cooling system, the Director may determine a cooling system is a closed-cycle recirculating system if the facility demonstrates to the satisfaction of the Director that make-up water withdrawals attributed specifically to the cooling portion of the cooling system have been minimized.

(d) *Contact cooling water* means water used for cooling which comes into direct contact with any raw material, product, or byproduct. Examples of contact cooling water may include but are not limited to quench water at facilities, cooling water in a cracking unit, and cooling water directly added to food and agricultural products processing.

(e) *Cooling water* means water used for contact or non-contact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water obtained from a public water system, reclaimed water from wastewater treatment facilities or desalination plants, treated effluent from a manufacturing facility, or cooling water that is used in a manufacturing process either before or after it is used for cooling as process water, is not considered cooling water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in § 125.91(a)(3).

(f) *Cooling water intake structure* means the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. The cooling water intake structure extends from the point at which water is first withdrawn from waters of the United States up to, and including the intake pumps.

(g) *Design intake flow* (DIF) means the value assigned during the cooling water intake structure design to the maximum instantaneous rate of flow of water the cooling water intake system is capable of withdrawing from a source waterbody. The facility's DIF may be adjusted to reflect permanent changes to the maximum capabilities of the cooling water intake system to withdraw cooling water, including pumps permanently removed from service, flow limit devices, and physical limitations of the piping. DIF does not include values associated with emergency and fire suppression capacity or redundant pumps (i.e., back-up pumps).

(h) *Entrainment* means any life stages of fish and shellfish in the intake water flow entering and passing through a cooling water intake structure and into a cooling water system, including the condenser or heat exchanger. Entrainable organisms include any organisms potentially subject to *entrainment.* For purposes of this subpart, *entrainment* excludes those organisms that are collected or retained by a sieve with maximum opening dimension of 0.56 inches. Examples of sieves meeting this definition include but are not limited to a ⅜ inch square mesh, or a ½ by ¼ inch mesh. A facility must use the same mesh size when counting entrainment as is used when counting impingement.

(i) *Entrainment mortality* means death as a result of entrainment through the cooling water intake structure, or death as a result of exclusion from the cooling water intake structure by fine mesh screens or other protective devices intended to prevent the passage of entrainable organisms through the cooling water intake structure.

(j) *Entrapment* means the condition where impingeable fish and shellfish lack the means to escape the cooling water intake. *Entrapment* includes but is not limited to: Organisms caught in the bucket of a traveling screen and unable to reach a fish return; organisms caught in the forebay of a cooling water intake system without any means of being returned to the source waterbody without experiencing mortality; or cooling water intake systems where the velocities in the intake pipes or in any channels leading to the forebay prevent organisms from being able to return to the source waterbody through the intake pipe or channel.

(k) *Existing facility* means any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 (or July 17, 2006 for an offshore oil and gas extraction facility) and any modification of, or any addition of a unit at such a facility. A facility built adjacent to another facility would be a new facility while the original facility would remain as an exiting facility for purposes of this subpart. A facility cannot both be an existing facility and a new facility as defined at § 125.83.

(l) *Flow reduction* means any modification to a cooling water intake structure or its operation that serves to reduce the volume of cooling water withdrawn. Examples include, but are not limited to, variable speed pumps, seasonal flow reductions, wet cooling towers, dry cooling towers, hybrid cooling towers, unit closures, or substitution for withdrawals by reuse of effluent from a nearby facility.

(m) *Fragile species* means those species of fish and shellfish that are least likely to survive any form of impingement. For purposes of this subpart, *fragile species* are defined as those with an impingement survival rate of less than 30 percent, including but not limited to alewife, American shad, Atlantic herring, Atlantic long-finned squid, Atlantic menhaden, bay anchovy, blueback herring, bluefish, butterfish, gizzard shad, grey snapper, hickory shad, menhaden, rainbow smelt, round herring, and silver anchovy.

(n) *Impingement* means the entrapment of any life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal. For purposes of this subpart, *impingement* includes those organisms collected or retained on a sieve with maximum distance in the opening of 0.56 inches, and excludes those organisms that pass through the sieve. Examples of sieves meeting this definition include but are not limited to a ⅜ inch square mesh, or a ½ by ¼ inch mesh. This definition is intended to prevent the conversion of entrainable organisms to counts of impingement or impingement mortality. The owner or operator of a facility must use a sieve with the same mesh size when counting entrainment as is used when counting impingement.

(o) *Impingement mortality* (IM) means death as a result of impingement. Impingement mortality also includes organisms removed from their natural ecosystem and lacking the ability to escape the cooling water intake system, and thus subject to inevitable mortality.

(p) *Independent supplier* means an entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from waters of the United States. The supplier provides the cooling water to other facilities for their use, but may itself also use a portion of the water. An entity that provides potable water to residential populations (e.g., public water system) is not a supplier for purposes of this subpart.

(q) *Latent mortality* means the delayed mortality of organisms that were initially alive upon being impinged or entrained but that do not survive the delayed effects of impingement and entrainment during an extended holding period. Delayed effects of impingement and entrainment include but are not limited to temperature change, physical stresses, and chemical stresses.

(r) *Minimize* means to reduce to the smallest amount, extent, or degree reasonably possible.

(s) *Modified traveling screen* means a traveling water screen that incorporates measures protective of fish and shellfish, including but not limited to: Screens with collection buckets or equivalent mechanisms designed to minimize turbulence to aquatic life; addition of a guard rail or barrier to prevent loss of fish from the collection system; replacement of screen panel materials with smooth woven mesh, drilled mesh, molded mesh, or similar materials that protect fish from descaling and other abrasive injury; continuous or near-continuous rotation of screens and operation of fish collection equipment to ensure any impinged organisms are recovered as soon as practical; a low pressure wash or gentle vacuum to remove fish prior to any high pressure spray to remove debris from the screens; and a fish handling and return system with sufficient water flow to return the fish directly to the source water in a manner that does not promote predation or re-impingement of the fish, or require a large vertical drop. The Director may approve of fish being returned to water sources other than the original source water, taking into account any recommendations from the Services with respect to endangered or threatened species. Examples of *modified traveling screens* include, but are not limited to: Modified Ristroph screens with a fish handling and return system, dual flow screens with smooth mesh, and rotary screens with fish returns or vacuum returns.

(t) *Moribund* means dying; close to death.

(u) *New unit* means a new ''stand-alone'' unit at an existing facility where construction of the new unit begins after October 14, 2014 and that does not otherwise meet the definition of a new facility at § 125.83 or is not otherwise already subject to subpart I of this part. A stand-alone unit is a separate unit that is added to a facility for either the same general industrial operation or another purpose. A new unit may have its own dedicated cooling water intake structure, or the new unit may use an existing or modified cooling water intake structure.

(v) *Offshore velocity cap* means a velocity cap located a minimum of 800 feet from the shoreline. A velocity cap is an open intake designed to change the direction of water withdrawal from vertical to horizontal, thereby creating horizontal velocity patterns that result in avoidance of the intake by fish and other aquatic organisms. For purposes of this subpart, the velocity cap must use bar screens or otherwise exclude marine mammals, sea turtles, and other large aquatic organisms.

(w) *Operational measure* means a modification to any operation that serves to minimize impact to all life stages of fish and shellfish from the cooling water intake structure. Examples of *operational measures* include, but are not limited to, more frequent rotation of traveling screens, use of a low pressure wash to remove fish prior to any high pressure spray to remove debris, maintaining adequate volume of water in a fish return, and debris minimization measures such as air sparging of intake screens and/or other measures taken to maintain the design intake velocity.

(x) *Social benefits* means the increase in social welfare that results from taking an action. Social benefits include private benefits and those benefits not taken into consideration by private decision makers in the actions they choose to take, including effects occurring in the future. Benefits valuation involves measuring the physical and biological effects on the environment from the actions taken. Benefits are generally treated one or more of three ways: A narrative containing a qualitative discussion of environmental effects, a quantified analysis expressed in physical or biological units, and a monetized benefits analysis in which dollar values are applied to quantified physical or biological units. The dollar values in a social benefits analysis are based on the principle of willingness-to-pay (WTP), which captures monetary benefits by measuring what individuals are willing to forgo in order to enjoy a particular benefit. Willingness-to-pay for nonuse values can be measured using benefits transfer or a stated preference survey.

(y) *Social costs* means costs estimated from the viewpoint of society, rather than individual stakeholders. Social cost represents the total burden imposed on the economy; it is the sum of all opportunity costs incurred associated with taking actions. These opportunity costs consist of the value lost to society of all the goods and services that will not be produced and consumed as a facility complies with permit requirements, and society reallocates

resources away from other production activities and towards minimizing adverse environmental impacts.

§ 125.93 [Reserved]

§ 125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?

(a) *Applicable Best Technology Available for Minimizing Adverse Environmental Impact (BTA) standards.* (1) On or after October 14, 2014, the owner or operator of an existing facility with a cumulative design intake flow (DIF) greater than 2 mgd is subject to the BTA (best technology available) standards for impingement mortality under paragraph (c) of this section, and entrainment under paragraph (d) of this section including any measures to protect Federally-listed threatened and endangered species and designated critical habitat established under paragraph (g) of this section.

(2) Prior to *October 14, 2014,* the owner or operator of an existing facility with a cumulative design intake flow (DIF) greater than 2 mgd is subject to site-specific impingement mortality and entrainment requirements as determined by the Director on a case-by-case Best Professional Judgment basis. The Director's BTA determination may be based on consideration of some or all of the factors at § 125.98(f)(2) and (3) and the requirements of § 125.94(c). If the Director requires additional information to make the decision on what BTA requirements to include in the applicant's permit for impingement mortality and entrainment, the Director should consider whether to require any of the information at 40 CFR 122.21(r).

(3) The owner or operator of a new unit is subject to the impingement mortality and entrainment standards under paragraph (e) of this section for all cooling water intake flows used by the new unit. The remainder of the existing facility is subject to the impingement mortality standard under paragraph (c) of this section, and the entrainment standard under paragraph (d) of this section. The entire existing facility including any new units is subject to any measures to protect Federally-listed threatened and endangered species and designated critical habitat established under paragraph (g) of this section.

(b) *Compliance with BTA standards.* (1) *Aligning compliance deadlines for impingement mortality and entrainment requirements.* After issuance of a final permit that establishes the entrainment requirements under § 125.94(d), the owner or operator of an existing facility must comply with the impingement mortality standard in § 125.94(c) as soon as practicable. The Director may establish interim compliance milestones in the permit.

(2) After issuance of a final permit establishing the entrainment requirements under § 125.94(d), the owner or operator of an existing facility must comply with the entrainment standard as soon as practicable, based on a schedule of requirements established by the Director. The Director may establish interim compliance milestones in the permit.

(3) The owner or operator of a new unit at an existing facility must comply with the BTA standards at § 125.94(e) with respect to the new unit upon commencement of the new unit's operation.

(c) *BTA Standards for Impingement Mortality.* The owner or operator of an existing facility must comply with one of the alternatives in paragraphs (c)(1) through (7) of this section, except as provided in paragraphs (c)(11) or (12) of this section, when approved by the Director. In addition, a facility may also be subject to the requirements of paragraphs (c)(8), (c)(9), or (g) of this section if the Director requires such additional measures.

(1) *Closed-cycle recirculating system.* A facility must operate a closed-cycle recirculating system as defined at § 125.92(c). In addition, you must monitor the actual intake flows at a minimum frequency of daily. The monitoring must be representative of normal operating conditions, and must include measuring cooling water withdrawals, make-up water, and blow down volume. In lieu of daily intake flow monitoring, you may monitor your cycles of concentration at a minimum frequency of daily; or

(2) *0.5 Feet Per Second Through-Screen Design Velocity.* A facility must operate a cooling water intake structure that has a maximum design through-screen intake velocity of 0.5 feet per second. The owner or operator of the facility must submit information to the Director that demonstrates that the maximum design intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh does not exceed 0.5 feet per second. The maximum velocity must be achieved under all conditions, including during minimum ambient source water surface elevations (based on BPJ using hydrological data) and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure; or

(3) *0.5 Feet Per Second Through-Screen Actual Velocity.* A facility must operate a cooling water intake structure that has a maximum through-screen intake velocity of 0.5 feet per second. The owner or operator of the facility must submit information to the Director that demonstrates that the maximum intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh does not exceed 0.5 feet per second. The maximum velocity must be achieved under all conditions, including during minimum ambient source water surface elevations (based on best professional judgment using hydrological data) and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure. The Director may authorize the owner or operator of the facility to exceed the 0.5 fps velocity at an intake for brief periods for the purpose of maintaining the cooling water intake system, such as backwashing the screen face. If the intake does not have a screen, the maximum intake velocity perpendicular to the opening of the intake must not exceed 0.5 feet per second during minimum ambient source water surface elevations. In addition, you must monitor the velocity at the screen at a minimum frequency of daily. In lieu of velocity monitoring at the screen face, you may calculate the through-screen velocity using water flow, water depth, and the screen open areas; or

(4) *Existing offshore velocity cap.* A facility must operate an existing offshore velocity cap as defined at § 125.92(v) that was installed on or before October 14, 2014. Offshore velocity caps installed after October 14, 2014 must make either a demonstration under paragraph (c)(6) of this section or meet the performance standard under paragraph (c)(7) of this section. In addition, you must monitor your intake flow at a minimum frequency of daily; or

(5) *Modified traveling screens.* A facility must operate a modified traveling screen that the Director determines meets the definition at § 125.92(s) and that, after review of the information required in the *impingement technology performance optimization study* at 40 CFR 122.21(r)(6)(i), the Director determines is the best technology available for impingement reduction at the site. As the basis for the Director's determination, the owner or operator of the facility must demonstrate the technology is or will be optimized to minimize impingement mortality of all non-fragile species. The Director must include verifiable and enforceable permit conditions that ensure the

technology will perform as demonstrated; or

(6) *Systems of technologies as the BTA for impingement mortality.* A facility must operate a system of technologies, management practices, and operational measures, that, after review of the information required in the *impingement technology performance optimization study* at 40 CFR 122.21(r)(6)(ii), the Director determines is the best technology available for impingement reduction at your cooling water intake structures. As the basis for the Director's determination, the owner or operator of the facility must demonstrate the system of technology has been optimized to minimize impingement mortality of all non-fragile species. In addition, the Director's decision will be informed by comparing the impingement mortality performance data under 40 CFR 122.21(r)(6)(ii)(D) to the impingement mortality performance standard that would otherwise apply under paragraph (c)(7) of this section. The Director must include verifiable and enforceable permit conditions that ensure the system of technologies will perform as demonstrated; or

(7) *Impingement mortality performance standard.* A facility must achieve a 12-month impingement mortality performance standard of all life stages of fish and shellfish of no more than 24 percent mortality, including latent mortality, for all non-fragile species together that are collected or retained in a sieve with maximum opening dimension of 0.56 inches and kept for a holding period of 18 to 96 hours. The Director may, however, prescribe an alternative holding period. You must conduct biological monitoring at a minimum frequency of monthly to demonstrate your impingement mortality performance. Each month, you must use all of the monitoring data collected during the previous 12 months to calculate the 12-month survival percentage. The 12-month impingement mortality performance standard is the total number of fish killed divided by the total number of fish impinged over the course of the entire 12 months. The owner or operator of the facility must choose whether to demonstrate compliance with this requirement for the entire facility, or for each individual cooling water intake structure for which this paragraph (c)(7) is the selected impingement mortality requirement.

(8) *Additional measures for shellfish.* The owner or operator must comply with any additional measures, such as seasonal deployment of barrier nets, established by the Director to protect shellfish.

(9) *Additional measures for other species.* The owner or operator must comply with any additional measures, established by the Director, to protect fragile species.

(10) *Reuse of other water for cooling purposes.* This impingement mortality standard does not apply to that portion of cooling water that is process water, gray water, waste water, reclaimed water, or other waters reused as cooling water in lieu of water obtained by marine, estuarine, or freshwater intakes.

(11) *De minimis rate of impingement.* In limited circumstances, rates of impingement may be so low at a facility that additional impingement controls may not be justified. The Director, based on review of site-specific data submitted under 40 CFR 122.21(r), may conclude that the documented rate of impingement at the cooling water intake is so low that no additional controls are warranted. For threatened or endangered species, all unauthorized take is prohibited by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Notice of a determination that no additional impingement controls are warranted must be included in the draft or proposed permit and the Director's response to all comments on this determination must be included in the record for the final permit.

(12) *Low capacity utilization power generating units.* If an existing facility has a cooling water intake structure used for one or more existing electric generating units, each with an annual average capacity utilization rate of less than 8 percent averaged over a 24-month block contiguous period, the owner or operator may request the Director consider less stringent requirements for impingement mortality for that cooling water intake structure. The Director may, based on review of site-specific data concerning cooling water system data under 40 CFR 122.21(r)(5), establish the BTA standards for impingement mortality for that cooling water intake structure that are less stringent than paragraphs (c)(1) through (7) of this section.

(d) *BTA standards for entrainment for existing facilities.* The Director must establish BTA standards for entrainment for each intake on a site-specific basis. These standards must reflect the Director's determination of the maximum reduction in entrainment warranted after consideration of the relevant factors as specified in § 125.98. The Director may also require periodic reporting on your progress towards installation and operation of site-specific entrainment controls. These reports may include updates on planning, design, and construction or other appropriate topics as required by the Director. If the Director determines that the site-specific BTA standard for entrainment under this paragraph requires performance equivalent to a closed-cycle recirculating system as defined at § 125.92(c), then under § 125.94(c)(1) your facility will comply with the impingement mortality standard for that intake.

(e) *BTA standards for impingement mortality and entrainment for new units at existing facilities.* The owner or operator of a new unit at an existing facility must achieve the impingement mortality and entrainment standards provided in either paragraph (e)(1) or (2) of this section, except as provided in paragraph (e)(4) of this section, for each cooling water intake structure used to provide cooling water to the new unit.

(1) *Requirements for new units.* The owner or operator of the facility must reduce the design intake flow for the new unit, at a minimum, to a level commensurate with that which can be attained by the use of a closed-cycle recirculating system for the same level of cooling for the new unit.

(2) *Alternative requirements for new units.* The owner or operator of a new unit at an existing facility must demonstrate to the Director that the technologies and operational measures employed will reduce the level of adverse environmental impact from any cooling water intake structure used to supply cooling water to the new unit to a comparable level to that which would be achieved under § 125.94(e)(1). This demonstration must include a showing that the entrainment reduction is equivalent to 90 percent or greater of the reduction that could be achieved through compliance with § 125.94(e)(1). In addition this demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result under the requirements of § 125.94(e)(1).

(3) This standard does not apply to:

(i) Process water, gray water, waste water, reclaimed water, or other waters reused as cooling water in lieu of water obtained by marine, estuarine, or freshwater intakes;

(ii) Cooling water used by manufacturing facilities for contact cooling purposes;

(iii) Portions of those water withdrawals for auxiliary plant cooling uses comprising less than two mgd of the facility's flow; and

(iv) Any quantity of emergency back-up water flows.

(4) The owner or operator of a facility must comply with any alternative

requirements established by the Director pursuant to § 125.98(b)(7).

(5) For cooling water flows excluded by paragraph (e)(3) of this section, the Director may establish additional BTA standards for impingement mortality and entrainment on a site-specific basis.

(f) *Nuclear facilities.* If the owner or operator of a nuclear facility demonstrates to the Director, upon the Director's consultation with the Nuclear Regulatory Commission, the Department of Energy, or the Naval Nuclear Propulsion Program, that compliance with this subpart would result in a conflict with a safety requirement established by the Commission, the Department, or the Program, the Director must make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Commission's, the Department's, or the Program's safety requirement.

(g) *Additional measures to protect Federally-listed threatened and endangered species and designated critical habitat.* The Director may establish in the permit additional control measures, monitoring requirements, and reporting requirements that are designed to minimize incidental take, reduce or remove more than minor detrimental effects to Federally-listed species and designated critical habitat, or avoid jeopardizing Federally-listed species or destroying or adversely modifying designated critical habitat (e.g., prey base). Such control measures, monitoring requirements, and reporting requirements may include measures or requirements identified by an appropriate Field Office of the U.S. Fish and Wildlife Service and/or Regional Office of the National Marine Fisheries Service during the 60 day review period pursuant to § 125.98(h) or the public notice and comment period pursuant to 40 CFR 124.10. Where established in the permit by the Director, the owner or operator must implement any such requirements.

(h) *Interim BTA requirements.* An owner or operator of a facility may be subject to interim BTA requirements established by the Director in the permit on a site-specific basis.

(i) *More stringent standards.* The Director must establish more stringent requirements as best technology available for minimizing adverse environmental impact if the Director determines that compliance with the applicable requirements of this section would not meet the requirements of applicable State or Tribal law, including compliance with applicable water quality standards (including designated uses, criteria, and antidegradation requirements).

(j) The owner or operator of a facility subject to this subpart must:

(1) Submit and retain permit application and supporting information as specified in § 125.95;

(2) Conduct compliance monitoring as specified in § 125.96; and

(3) Report information and data and keep records as specified in § 125.97.

§ 125.95 Permit application and supporting information requirements.

(a) *Permit application submittal timeframe for existing facilities.* (1) The owner or operator of a facility subject to this subpart whose currently effective permit expires after July 14, 2018, must submit to the Director the information required in the applicable provisions of 40 CFR 122.21(r) when applying for a subsequent permit (consistent with the owner or operator's duty to reapply pursuant to 40 CFR 122.21(d)).

(2) The owner or operator of a facility subject to this subpart whose currently effective permit expires prior to or on July 14, 2018, may request the Director to establish an alternate schedule for the submission of the information required in 40 CFR 122.21(r) when applying for a subsequent permit (consistent with the owner or operator's duty to reapply pursuant to 40 CFR 122.21(d)). If the owner or operator of the facility demonstrates that it could not develop the required information by the applicable date for submission, the Director must establish an alternate schedule for submission of the required information.

(3) The Director may waive some or all of the information requirements of 40 CFR 122.21(r) if the intake is located in a manmade lake or reservoir and the fisheries are stocked and managed by a State or Federal natural resources agency or the equivalent. If the manmade lake or reservoir contains Federally-listed threatened and endangered species, or is designated critical habitat, such a waiver shall not be granted.

(b) *Permit application submittal timeframe for new units.* For the owner or operator of any new unit at an existing facility subject to this subpart:

(1) You must submit the information required in 40 CFR 122.21(r) for the new unit to the Director no later than 180 days before the planned commencement of cooling water withdrawals for the operation of the new unit. If you have already submitted the required information in your previous permit application, you may choose to submit an update to the required information.

(2) The owner or operator is encouraged to submit their permit applications well in advance of the 180 day requirement to avoid delay.

(c) *Permit applications.* After the initial submission of the 40 CFR 122.21(r) permit application studies after October 14, 2014, the owner or operator of a facility may, in subsequent permit applications, request to reduce the information required, if conditions at the facility and in the waterbody remain substantially unchanged since the previous application so long as the relevant previously submitted information remains representative of current source water, intake structure, cooling water system, and operating conditions. Any habitat designated as critical or species listed as threatened or endangered after issuance of the current permit whose range of habitat or designated critical habit includes waters where a facility intake is located constitutes potential for a substantial change that must be addressed by the owner/operator in subsequent permit applications, unless the facility received an exemption pursuant to 16 U.S.C. 1536(o) or a permit pursuant to 16 U.S.C. 1539(a) or there is no reasonable expectation of take. The owner or operator of a facility must submit its request for reduced cooling water intake structure and waterbody application information to the Director at least two years and six months prior to the expiration of its NPDES permit. The owner or operator's request must identify each element in this subsection that it determines has not substantially changed since the previous permit application and the basis for the determination. The Director has the discretion to accept or reject any part of the request.

(d) The Director has the discretion to request additional information to supplement the permit application, including a request to inspect a facility.

(e) *Permit application records.* The owner or operator of a facility must keep records of all submissions that are part of its permit application until the subsequent permit is issued to document compliance with the requirements of this section. If the Director approves a request for reduced permit application studies under § 125.95(a) or (c) or § 125.98(g), the owner or operator of a facility must keep records of all submissions that are part of the previous permit application until the subsequent permit is issued.

(f) In addition, in developing its permit application, the owner or operator of an existing facility or new unit at an existing facility must, based on readily available information at the

time of the permit application, instead of the information required at § 122.21(r)(4)(vi) of this chapter identify all Federally-listed threatened and endangered species and/or designated critical habitat that are or may be present in the action area.

(g) *Certification.* The owner or operator of a facility must certify that its permit application is true, accurate and complete pursuant to § 122.22(d) of this chapter.

§ 125.96 Monitoring requirements.

(a) *Monitoring requirements for impingement mortality for existing facilities.* The Director may establish monitoring requirements in addition to those specified at § 125.94(c), including, for example, biological monitoring, intake velocity and flow measurements. If the Director establishes such monitoring, the specific protocols will be determined by the Director.

(b) *Monitoring requirements for entrainment for existing facilities.* Monitoring requirements for entrainment will be determined by the Director on a site-specific basis, as appropriate, to meet requirements under § 125.94(d).

(c) *Additional monitoring requirements for existing facilities.* The Director may require additional monitoring for impingement or entrainment including, but not limited to, the following:

(1) The Director may require additional monitoring if there are changes in operating conditions at the facility or in the source waterbody that warrant a re-examination of the operational conditions identified at 40 CFR 122.21(r).

(2) The Director may require additional monitoring for species not subject to the BTA requirements for impingement mortality at § 125.95(c). Such monitoring requirements will be determined by the Director on a site-specific basis.

(d) *Monitoring requirements for new units at existing facilities.* Monitoring is required to demonstrate compliance with the requirements of § 125.94(e).

(1) The Director may establish monitoring requirements for impingement, impingement mortality, and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(4). Monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization at 40 CFR 122.21(r)(4). If the Director establishes such monitoring requirements, the frequency of monitoring and specific protocols will be determined by the Director.

(2) If your facility is subject to the requirements of § 125.94(e)(1) or (2), the frequency of flow monitoring and velocity monitoring must be daily and must be representative of normal operating conditions. Flow monitoring must include measuring cooling water withdrawals, make-up water, and blowdown volume. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(e).

(3) If your facility is subject to the requirements of § 125.94(e)(2), you must monitor to demonstrate achievement of reductions commensurate with a closed-cycle recirculating system. You must monitor entrainable organisms at a proximity to the intake that is representative of the entrainable organisms in the absence of the intake structure. You must also monitor the latent entrainment mortality in front of the intake structure. Mortality after passing the cooling water intake structure must be counted as 100 percent mortality unless you have demonstrated to the approval of the Director that the mortality for each species is less than 100 percent. Monitoring must be representative of the cooling water intake when the structure is in operation. In addition, sufficient samples must be collected to allow for calculation of annual average entrainment levels of all life stages of fish and shellfish. Specific monitoring protocols and frequency of monitoring will be determined by the Director. You must follow the monitoring frequencies identified by the Director for at least two years after the initial permit issuance. After that time, the Director may approve a request for less frequent monitoring in the remaining years of the permit term and when a subsequent permit is reissued. The monitoring must measure the total count of entrainable organisms or density of organisms, unless the Director approves of a different metric for such measurements. In addition, you must monitor the AIF for each intake. The AIF must be measured at the same time as the samples of entrainable organisms are collected. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(e).

(4) The Director may require additional monitoring for impingement or entrainment at the cooling water intake structure used by a new unit including, but not limited to, the following:

(i) The Director may require additional monitoring if there are changes in operating conditions at the facility or in the source waterbody that warrant a re-examination of the operational conditions identified at 40 CFR 122.21(r).

(ii) The Director may require additional monitoring for species not subject to the BTA requirements for impingement mortality at § 125.95(c). Such monitoring requirements will be determined by the Director on a site-specific basis.

(e) *Visual or remote inspections.* You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct such inspections at least weekly to ensure that any technologies operated to comply with § 125.94 are maintained and operated to function as designed including those installed to protect Federally-listed threatened or endangered species or designated critical habitat. The Director may establish alternative procedures if this requirement is not feasible (e.g., an offshore intake, velocity cap, or during periods of inclement weather).

(f) *Request for reduced monitoring.* For facilities that are subject to § 125.94(c)(7) and where the facility's cooling water intake structure does not directly or indirectly affect Federally-listed threatened and endangered species, or designated critical habitat, the owner or operator of the facility may request the Director to reduce monitoring requirements after the first full permit term in which these monitoring requirements are implemented, on the condition that the results of the monitoring to date demonstrate that the owner or operator of the facility has consistently operated the intake as designed and is meeting the requirements of § 125.94(c).

(g) *Additional monitoring related to Federally-listed threatened and endangered species and designated critical habitat at existing facilities.* Where the Director requires additional measures to protect Federally-listed threatened or endangered species or designated critical habitat pursuant to § 125.94(g), the Director shall require monitoring associated with those measures.

§ 125.97 Other permit reporting and recordkeeping requirements.

The owner or operator of an existing facility subject to this subpart is required to submit to the Director the following information:

(a) *Monitoring reports.* Discharge Monitoring Reports (DMRs) (or equivalent State reports) and results of all monitoring, demonstrations, and

other information required by the permit sufficient to determine compliance with the permit conditions and requirements established under § 125.94.

(b) *Status reports.* Any reports required by the Director under § 125.94.

(c) *Annual certification statement and report.* An annual certification statement signed by the responsible corporate officer as defined in § 122.22 of this chapter subject to the following:

(1) If the information contained in the previous year's annual certification is still pertinent, you may simply state as such in a letter to the Director and the letter, along with any applicable data submission requirements specified in this section shall constitute the annual certification.

(2) If you have substantially modified operation of any unit at your facility that impacts cooling water withdrawals or operation of your cooling water intake structures, you must provide a summary of those changes in the report. In addition, you must submit revisions to the information required at § 122.21(r) of this chapter in your next permit application.

(d) *Permit reporting records retention.* Records of all submissions that are part of the permit reporting requirements of this section must be retained until the subsequent permit is issued. In addition, the Director may require supplemental recordkeeping such as compliance monitoring under § 125.96, supplemental data collection under 40 CFR 122.21, additional monitoring or data collection under § 125.95.

(e) *Reporting.* The Director has the discretion to require additional reporting when necessary to establish permit compliance and may provide for periodic inspection of the facility. The Director may require additional reporting including but not limited to the records required under § 125.97(d).

(f) *Records of Director's Determination of BTA for Entrainment.* All records supporting the Director's Determination of BTA for Entrainment under § 125.98(f) or (g) must be retained until such time as the Director revises the Determination of BTA for Entrainment in the permit.

(g) *Additional reporting requirements related to Federally-listed threatened and endangered species or designated critical habitat.* Where the Director requires additional measures to protect Federally-listed threatened or endangered species or critical habitat pursuant to § 125.94(g), the Director shall require reporting associated with those measures.

§ 125.98 Director requirements.

(a) *Permit application.* The Director must review the materials submitted by the applicant under 40 CFR 122.21(r) for completeness pursuant to 40 CFR 122.21(e) at the time of initial permit application and any application for a subsequent permit.

(b) *Permitting requirements.* Section 316(b) requirements are implemented through an NPDES permit. Based on the information submitted in the permit application, the Director must determine the requirements and conditions to include in the permit.

(1) Such permits, including permits with alternative requirements under paragraph (b)(7) of this section, must include the following language as a permit condition: ''Nothing in this permit authorizes take for the purposes of a facility's compliance with the Endangered Species Act.''

(2) In the case of any permit issued after July 14, 2018, at a minimum, the permit must include conditions to implement and ensure compliance with the impingement mortality standard at § 125.94(c) and the entrainment standard at § 125.94(d), including any measures to protect Federally-listed threatened and endangered species and designated critical habitat required by the Director. In addition, the permit must include conditions, management practices and operational measures necessary to ensure proper operation of any technology used to comply with the impingement mortality standard at § 125.94(c) and the entrainment standard at § 125.94(d). Pursuant to § 125.94(g), the permit may include additional control measures, monitoring requirements, and reporting requirements that are designed to minimize incidental take, reduce or remove more than minor detrimental effects to Federally-listed species and designated critical habitat, or avoid jeopardizing Federally-listed species or destroying or adversely modifying designated critical habitat (e.g. prey base). Such control measures, monitoring requirements, and reporting requirements may include measures or requirements identified by the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service during the 60 day review period pursuant to § 125.98(h) or the public notice and comment period pursuant to 40 CFR 124.10. The Director may include additional permit requirements if:

(i) Based on information submitted to the Director by any fishery management agency or other relevant information, there are migratory or sport or commercial species subject to entrainment that may be directly or indirectly affected by the cooling water intake structure; or

(ii) It is determined by the Director, based on information submitted by any fishery management agencies or other relevant information, that operation of the facility, after meeting the entrainment standard of this section, would still result in undesirable cumulative stressors to Federally-listed and proposed, threatened and endangered species, and designated and proposed critical habitat.

(3) At a minimum, the permit must require the permittee to monitor as required at §§ 125.94 and 125.96.

(4) At a minimum, the permit must require the permittee to report and keep the records specified at § 125.97.

(5) After October 14, 2014, in the case of any permit issued before July 14, 2018 for which the Director, pursuant to § 125.95(a)(2), has established an alternate schedule for submission of the information required by 40 CFR 122.21(r), the Director may include permit conditions to ensure that, for any subsequent permit, the Director will have all the information required by 40 CFR 122.21(r) necessary to establish impingement mortality and entrainment BTA requirements under § 125.94(c) and (d). In addition, the Director must establish interim BTA requirements in the permit based on the Director's best professional judgment on a site-specific basis in accordance with § 125.90(b) and 40 CFR 401.14.

(6) In the case of any permit issued after October 14, 2014, and applied for before October 14, 2014, the Director may include permit conditions to ensure that the Director will have all the information under 40 CFR 122.21(r) necessary to establish impingement mortality and entrainment BTA requirements under § 125.94(c) and (d) for the subsequent permit. The Director must establish interim BTA requirements in the permit on a site-specific basis based on the Director's best professional judgment in accordance with § 125.90(b) and 40 CFR 401.14.

(7) For new units at existing facilities, the Director may establish alternative requirements if the data specific to the facility indicate that compliance with the requirements of § 125.94(e)(1) or (2) for each new unit would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at issue, or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement

or entrainment, or significant adverse impacts on local energy markets:

(i) The alternative requirements must achieve a level of performance as close as practicable to the requirements of § 125.94(e)(1);

(ii) The alternative requirements must ensure compliance with these regulations, other provisions of the Clean Water Act, and State and Tribal law;

(iii) The burden is on the owner or operator of the facility requesting the alternative requirement to demonstrate that alternative requirements should be authorized for the new unit.

(8) The Director may require additional measures such as seasonal deployment of barrier nets, to protect shellfish.

(c) *Compliance schedule.* When the Director establishes a schedule of requirements under § 125.94(b), the schedule must provide for compliance with § 125.94(c) and (d) as soon as practicable. When establishing a schedule for electric power generating facilities, the Director should consider measures to maintain adequate energy reliability and necessary grid reserve capacity during any facility outage. These may include establishing a staggered schedule for multiple facilities serving the same localities. The Director may confer with independent system operators and state public utility regulatory agencies when establishing a schedule for electric power generating facilities. The Director may determine that extenuating circumstances (e.g., lengthy scheduled outages, future production schedules) warrant establishing a different compliance date for any manufacturing facility.

(d) *Supplemental Technologies and Monitoring.* The Director may require additional technologies for protection of fragile species, and may require additional monitoring of species of fish and shellfish not already required under § 125.95(c). The Director may consider data submitted by other interested parties. The Director may also require additional study and monitoring if a threatened or endangered species has been identified in the vicinity of the intake.

(e) *Impingement technology performance optimization study.* The owner or operator of a facility that chooses to comply with § 125.94(c)(5) or (6) must demonstrate in its *impingement technology performance optimization study* that the operation of its impingement reduction technology has been optimized to minimize impingement mortality of non-fragile species. The Director may request further data collection and information as part of the *impingement technology performance optimization study,* including extending the study period beyond two years. The Director may also consider previously collected biological data and performance reviews as part of the study. The Director must include in the permit verifiable and enforceable permit conditions that ensure the modified traveling screens or other systems of technologies will perform as demonstrated. The Director may waive all or part of the *impingement technology performance optimization study* at 40 CFR122.21(r)(6) after the first permit cycle wherein the permittee is deemed in compliance with § 125.94(c).

(f) *Site-specific entrainment requirements.* The Director must establish site-specific requirements for entrainment after reviewing the information submitted under 40 CFR 122.21(r) and § 125.95. These entrainment requirements must reflect the Director's determination of the maximum reduction in entrainment warranted after consideration of factors relevant for determining the best technology available for minimizing adverse environmental impact at each facility. These entrainment requirements may also reflect any control measures to reduce entrainment of Federally-listed threatened and endangered species and designated critical habitat (e.g. prey base). The Director may reject an otherwise available technology as a basis for entrainment requirements if the Director determines there are unacceptable adverse impacts including impingement, entrainment, or other adverse effects to Federally-listed threatened or endangered species or designated critical habitat. Prior to any permit reissuance after July 14, 2018, the Director must review the performance of the facility's installed entrainment technology to determine whether it continues to meet the requirements of § 125.94(d).

(1) The Director must provide a written explanation of the proposed entrainment determination in the fact sheet or statement of basis for the proposed permit under 40 CFR 124.7 or 124.8. The written explanation must describe why the Director has rejected any entrainment control technologies or measures that perform better than the selected technologies or measures, and must reflect consideration of all reasonable attempts to mitigate any adverse impacts of otherwise available better performing entrainment technologies.

(2) The proposed determination in the fact sheet or statement of basis must be based on consideration of any additional information required by the Director at § 125.98(i) and the following factors listed below. The weight given to each factor is within the Director's discretion based upon the circumstances of each facility.

(i) Numbers and types of organisms entrained, including, specifically, the numbers and species (or lowest taxonomic classification possible) of Federally-listed, threatened and endangered species, and designated critical habitat (e.g., prey base);

(ii) Impact of changes in particulate emissions or other pollutants associated with entrainment technologies;

(iii) Land availability inasmuch as it relates to the feasibility of entrainment technology;

(iv) Remaining useful plant life; and

(v) Quantified and qualitative social benefits and costs of available entrainment technologies when such information on both benefits and costs is of sufficient rigor to make a decision.

(3) The proposed determination in the fact sheet or statement of basis may be based on consideration of the following factors to the extent the applicant submitted information under 40 CFR 122.21(r) on these factors:

(i) Entrainment impacts on the waterbody;

(ii) Thermal discharge impacts;

(iii) Credit for reductions in flow associated with the retirement of units occurring within the ten years preceding October 14, 2014;

(iv) Impacts on the reliability of energy delivery within the immediate area;

(v) Impacts on water consumption; and

(vi) Availability of process water, gray water, waste water, reclaimed water, or other waters of appropriate quantity and quality for reuse as cooling water.

(4) If all technologies considered have social costs not justified by the social benefits, or have unacceptable adverse impacts that cannot be mitigated, the Director may determine that no additional control requirements are necessary beyond what the facility is already doing. The Director may reject an otherwise available technology as a BTA standard for entrainment if the social costs are not justified by the social benefits.

(g) *Ongoing permitting proceedings.* In the case of permit proceedings begun prior to October 14, 2014 whenever the Director has determined that the information already submitted by the owner or operator of the facility is sufficient, the Director may proceed with a determination of BTA standards for impingement mortality and

entrainment without requiring the owner or operator of the facility to submit the information required in 40 CFR 122.21(r). The Director's BTA determination may be based on some or all of the factors in paragraphs (f)(2) and (3) of this section and the BTA standards for impingement mortality at § 125.95(c). In making the decision on whether to require additional information from the applicant, and what BTA requirements to include in the applicant's permit for impingement mortality and site-specific entrainment, the Director should consider whether any of the information at 40 CFR 122.21(r) is necessary.

(h) The Director must transmit all permit applications for facilities subject to this subpart to the appropriate Field Office of the U.S. Fish and Wildlife Service and/or Regional Office of the National Marine Fisheries Service upon receipt for a 60 day review prior to public notice of the draft or proposed permit. The Director shall provide the public notice and an opportunity to comment as required under 40 CFR 124.10 and must submit a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any) to the appropriate Field Office of the. Fish and Wildlife Service and/or Regional Office of the National Marine Fisheries Service. This includes notice of specific cooling water intake structure requirements at § 124.10(d)(1)(ix) of this chapter, notice of the draft permit, and any specific information the Director has about threatened or endangered species and critical habitat that are or may be present in the action area, including any proposed control measures and monitoring and reporting requirements for such species and habitat.

(i) *Additional information.* In implementing the Director's responsibilities under the provisions of this subpart, the Director is authorized to inspect the facility and to request additional information needed by the Director for determining permit conditions and requirements, including any additional information from the facility recommended by the Services upon review of the permit application under paragraph (h) of this section.

(j) Nothing in this subpart authorizes the take, as defined at 16 U.S.C. 1532(19), of threatened or endangered species of fish or wildlife. Such take is prohibited under the Endangered Species Act unless it is exempted pursuant to 16 U.S.C. 1536(o) or permitted pursuant to 16 U.S.C. 1539(a). Absent such exemption or permit, any facility operating under the authority of this regulation must not take threatened or endangered wildlife.

(k) The Director must submit at least annually to the appropriate EPA Regional Office facilities' annual reports submitted pursuant to § 125.97(g), for compilation and transmittal to the Services.

§ 125.99 [Reserved]

[FR Doc. 2014–12164 Filed 8–14–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 79 Friday,

No. 158 August 15, 2014

Part III

Federal Communications Commission

47 CFR Parts 0, 1, 2, et al.

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 15, 27, 73, and 74

[GN Docket No. 12–268; FCC 14–50]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts rules to implement the broadcast television spectrum incentive auction. Our central objective in designing this incentive auction is to harness the economics of demand for spectrum in order to allow market forces to determine its highest and best use, which will benefit consumers of telecommunications services.

DATES: Effective October 14, 2014 except for amendments to §§ 1.2105(a)(2)(xii) and (c)(6); 1.2204(a), (c), (d)(3), and (d)(5); 1.2205(c) and (d); 1.2209; 2.1033(c)(19)(iii); 15.713(b)(2)(iv); 15.713(h)(10); 27.14(k) and (t)(6); 27.17(c); 27.19(b) and (c); 73.3700(b)(1)(i) through (v), (b)(2)(i) and (ii), (b)(3), (b)(4)(i) and (ii), and (b)(5); 73.3700(c); 73.3700(d); 73.3700(e)(2) through (6); 73.3700(f); 73.3700(g); 73.3700(h)(4) and (6); 74.602(h)(5)(ii) and (iii); and 74.802(b)(2), which contain new or modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Paul Malmud, Wireless Telecommunications Bureau, Broadband Division, at (201) 418–0006 or by email to *Paul.Malmud@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0602/FCC-14-50A1.pdf.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via email to *bmillin@fcc.gov.*

I. Introduction

1. This Order (*See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* FCC 14–50, GN Docket No. 12–268 (rel. June 2, 2014)), adopts rules to implement the broadcast television spectrum incentive auction, which the Federal Communications Commission (''FCC'' or ''Commission'') proposed in *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions* 77 FR 69934, Nov. 21, 2012 (''*NPRM*''). The incentive auction is a new tool authorized by Congress to help the Commission meet the Nation's accelerating spectrum needs as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, sections 6402, 6403, 125 Stat. 156 (2012) (''Spectrum Act'').

II. The Reorganized UHF Band

A. Band Plan for the New 600 MHz Band

1. All-Paired, Down From 51 Band Plan

2. We adopt the 600 MHz Band Plan with paired uplink and downlink bands, which will enhance the value of the 600 MHz Band, consistent with our central goal for the incentive auction. Commenters overwhelmingly support this approach. The few commenters who oppose using paired spectrum blocks support adopting a TDD-only band plan, which does not require separate uplink and downlink spectrum bands. We are unpersuaded that the benefits these commenters assert for allowing TDD technology in the 600 MHz Band—broad global adoption, improved spectrum efficiency, and more dynamic use of communications channels—are sufficiently advantageous to adopt an unpaired, TDD framework for the 600 MHz Band. For example, although TDD operations do not require a duplex gap, TDD operations use five to 10 percent of their spectrum capacity as overhead for time domain duplex guard time intervals, and therefore, are not necessarily more efficient than FDD operations. Further, T-Mobile states that TDD has link budget constraints, resulting in less uplink coverage at the cell edge than an FDD system. Based on our examination of the record, FDD is better suited for the 600 MHz Band at the present time in light of current technology, the Band's propagation characteristics, and potential interference issues present in the Band. Therefore, we decline to adopt a TDD-based band plan.

3. We also decline to allow a mix of TDD and FDD use in the 600 MHz Band, because, as several commenters indicate, allowing both FDD and TDD operations in the 600 MHz Band would require additional guard bands and increase the potential for harmful interference both within and outside the Band. We emphasize that our determination regarding the suitability of an unpaired, TDD framework is limited to the decision before us. Different characteristics of other bands, or advances in technology, may make an unpaired, TDD-compatible framework appropriate in other circumstances.

4. Although most commenters support our decision to offer paired spectrum blocks, the record diverges on how to offer spectrum blocks if we can repurpose more than 84 megahertz, i.e., how to offer 600 MHz licenses below channel 37. Some commenters suggest that it would be beneficial to offer downlink-only blocks because of the asymmetrical nature of broadband traffic patterns. Other commenters note that offering downlink-only blocks creates an easy way to accommodate market variation (i.e., offering different amounts of spectrum in different geographic areas) by varying the amount of downlink offered in a given market. Although we recognize that broadband traffic patterns are currently asymmetrical and offering downlink-only blocks is one way to accommodate market variation, we agree with other commenters that the benefits of offering paired spectrum blocks are greater than the benefits of offering downlink-only blocks in the 600 MHz Band. Further, although some argue that offering downlink-only blocks would mitigate antenna performance issues by creating two separate bands, such an approach would reduce the overall spectrum utility as a result of the necessary frequency separation.

5. In order to repurpose this spectrum, we must enhance the spectrum's value to potential bidders, as well as serve the public interest, and we find that offering paired blocks rather than downlink-only blocks best achieves these goals. To effectively use 600 MHz downlink-only blocks, a provider must not only have available uplink spectrum to pair it with, but that spectrum ideally should be below 1 GHz in order to take advantage of the superior propagation

characteristics of the 600 MHz Band that allow for increased coverage. At the same time, some commenters state that aggregating 600 MHz spectrum with another band below 1 GHz presents technical challenges; consequently, in practice, wireless providers may choose to aggregate 600 MHz downlink-only blocks with a high spectrum band, thus negating some of the coverage benefits of the 600 MHz Band that would be realized from using paired 600 MHz blocks. Further, we agree with commenters that argue that paired blocks are more valuable than downlink-only blocks to new entrants. Recent auctions also suggest that paired spectrum is more valuable to bidders than unpaired blocks.

6. We also agree with commenters that assert that offering downlink-only blocks in the 600 MHz auction may undermine competition. Because providers must pair downlink-only blocks with existing spectrum holdings, new entrants would not be able to use downlink-only blocks, thus limiting their utility. In contrast, offering paired spectrum blocks will benefit all potential 600 MHz Band licensees. We also agree with commenters that assert that paired blocks will facilitate the deployment of networks by smaller carriers and new entrants by allowing them to obtain much-needed low frequency, paired spectrum.

7. Further, offering downlink-only blocks would further complicate the auction design without a commensurate benefit. As explained above, downlink-only blocks are less valuable than paired blocks to bidders, and offering both paired and unpaired blocks would introduce additional differences among licenses in the forward auction and increase the amount of time the auction takes to close. As discussed in the *NPRM,* the Commission expressed the desire to offer generic blocks in order to reduce the time and, therefore, the cost, of bidder participation.

8. Finally, our all-paired band plan generally has nationally consistent blocks and guard bands, which will promote interoperability. In contrast, offering downlink-only blocks could exacerbate interoperability concerns by separating the 600 MHz Band into two bands. If we license both unpaired and paired blocks, we would expect that the industry standards body would create separate bands for the paired blocks and unpaired blocks, as it has done previously. If the 600 MHz Band were split into two separate bands, then some devices could support part, but not all, of the Band. Further, US Cellular raises concerns over the potential for wireless carriers using downlink-only blocks to configure their networks so as to create barriers to roaming. Limiting the auction to paired blocks will help to ameliorate these concerns. It will also promote international harmonization, and in particular, should help to address cross-border issues with Canada and Mexico.

9. *''Down from 51'' Approach.* We conclude that the ''Down from 51'' approach we adopt, with contiguous uplink and downlink bands starting at channel 51, will provide greater technical certainty because of its technical advantages over other options and, therefore, will enhance the value of the 600 MHz Band for bidders and serve the public interest. In particular, a contiguous band plan will reduce the antenna bandwidth for 600 MHz devices, which in turn will reduce the cost and complexity of such devices. As a result, we decline to adopt any of the band plans in which the uplink and downlink bands are ''split'' (the uplink and downlink bands are not adjacent to one another) because the antenna bandwidth would be much greater.

10. Further, by placing the 600 MHz uplink band next to the 700 MHz uplink band and adopting generally consistent technical rules for the 600 MHz and 700 MHz Bands, we improve spectrum efficiency. This continuity should also speed deployment of the 600 MHz Band and make it easier to develop devices for it. Further, placing the uplink pass band at the upper end of the 600 MHz Band limits the potential effects of both harmonic interference and intermodulation interference. Starting the 600 MHz uplink band at channel 51 also clears television operations out of channel 51, which should help spur deployment of the 700 MHz lower A Block. This approach will provide greater certainty to Wireless Medical Telemetry Service (''WMTS'') operators regarding their operating environment as well, and will likely result in greater spectrum efficiency than placing uplink operations adjacent to channel 37. This approach also simplifies the incentive auction design, which is critical to its overall success. We therefore adopt the ''Down from 51'' approach and decline to adopt the ''Down from 51 Reversed'' band plan, in which the downlink band would begin after a guard band at channel 51 (698 MHz), followed by a duplex gap, and then the uplink band.

11. Very few commenters criticize the Down from 51 approach that we adopt in our 600 MHz Band Plan. DISH complains that the Down from 51 band plans that commenters propose limit paired spectrum to the portion of the 600 MHz Band above channel 37, thereby restricting ''the amount of spectrum realistically available for smaller operators.'' The approach we are adopting, however, involves paired spectrum only, including below channel 37, so it increases the amount of spectrum available for all wireless providers. We decline to adopt J. Pavlica's proposal to first license to wireless broadband providers the VHF channels in the 54–72 MHz and the 174–216 MHz bands (channels 2, 3, 4, 7, 8, 9, 10, 11, 12, and 13). UHF spectrum above 300 MHz is better suited for wireless broadband service because of its propagation characteristics as well as its shorter wavelengths, which allow for smaller radio components including antennas and filters. In addition, the Spectrum Act limits the Commission's ability to repack the VHF channels, which would hamper our ability to repack efficiently if we were to adopt Pavlica's band plan.

2. 5+5 MHz, Interchangeable Spectrum Blocks

12. We adopt the proposal to license in five megahertz blocks, which commenters overwhelmingly support, because these ''building blocks'' will allow for the greatest amount of flexibility and efficiency in the 600 MHz Band Plan. Specifically, we find that five megahertz blocks: (1) Are the most compatible with current and emerging technologies; (2) may be easily aggregated to form larger blocks; (3) will maximize the number of licensed blocks in each market; and (4) will allow for diverse participation in the auction.

13. We agree with commenters that five megahertz building blocks are most compatible with current wireless technologies. For example, numerous commenters state that five megahertz building blocks are most compatible with several current and emerging wireless broadband technologies, including LTE, LTE-Advanced, High Speed Packet Access + (''HSPA+''), and W–CDMA. Further, because many current wireless broadband technologies operate with five megahertz blocks or blocks that are multiples of five megahertz, this block size facilitates aggregation. Commenters also support our view that five megahertz building blocks will maximize the number of licensed blocks in each market. Finally, licensing in five megahertz building blocks will allow auction participation by small, midsize, regional, and national carriers. As Leap notes, using the smaller five megahertz bandwidth blocks will promote flexibility and allow auction participation by diverse carriers, particularly smaller carriers who may not need such large swaths of spectrum.

14. We decline to license the 600 MHz spectrum using six megahertz blocks, a proposal which no commenters support, and which several commenters oppose. Using six megahertz blocks would strand spectrum and reduce the number of new 600 MHz licenses because most FDD technologies support five megahertz blocks. Similarly, using six megahertz blocks might lead to inefficient use of the spectrum as each six megahertz block would typically accommodate only one active five megahertz LTE channel. Converting six megahertz channels into 5+5 megahertz 600 MHz licenses could, in contrast, create extra blocks to license. As explained further below, because we adopt a 600 MHz Band Plan with paired uplink and downlink bands, we also decline to adopt Sprint's proposal to license the spectrum using ten megahertz blocks to accommodate its band plan proposal for TDD operations.

15. We also adopt the proposal to incorporate ''remainder'' spectrum, i.e., any excess spectrum remaining after converting six megahertz television channels to paired, 5+5 megahertz 600 MHz licenses, into the 600 MHz Band guard bands to help prevent harmful interference between licensed services. A majority of commenters supports this approach. As discussed below, we find that including these remainders in the guard bands is the best approach to support a straightforward auction design and help bolster innovation and investment by unlicensed devices in the guard band spectrum. We agree with Google and Microsoft that ''[s]oliciting separate bids for the remaining small spectrum slivers in the simultaneous forward and reverse auction will introduce needless complexity to the auction process.''

16. In our 600 MHz Band Plan, we create interchangeable, ''generic'' [1] categories of spectrum blocks by establishing guard bands and technical rules to ensure a like operating environment among different blocks.

17. Creating spectrum blocks that are as functionally and technically interchangeable as possible enhances substitutability among blocks. Offering interchangeable spectrum blocks allows us to conduct bidding for generic blocks, assigning specific frequencies later, which will speed up the forward auction bidding process. Commenters generally support the proposal to offer interchangeable blocks but emphasize the importance of making them truly interchangeable. Some commenters suggest that we group the spectrum blocks into different classes and treat each class as a separate category. As explained below, we adopt rules that will allow us to group generic blocks into separate categories of licenses for purposes of the forward auction bidding.

18. We also conclude that it is important for wireless providers to be able to aggregate 600 MHz Band spectrum blocks. The ability to aggregate spectrum by obtaining multiple spectrum blocks in the same service area, or licenses in multiple service areas, affords potential bidders significant flexibility to meet their coverage and capacity needs in accordance with their business plans. Commenters overwhelmingly support allowing licensees to aggregate spectrum blocks. Specifically, they encourage us to create an auction process that allows bidders to aggregate contiguous frequency blocks within a service area or across geographic areas using a variety of auction design mechanisms, such as assignment round rules. Under our rules, licensees will be able to aggregate 600 MHz Band spectrum in the forward auction, as well as after the auction. As a result of these rules, wireless providers have the ability to aggregate spectrum to meet their business needs.

3. Geographic Area Licensing

19. We adopt the proposal to implement a geographic licensing approach. We conclude that a geographic licensing approach is well-suited for the types of fixed and mobile services that will likely be deployed in this band. In addition, geographic area licensing is consistent with the licensing approach adopted for similar spectrum bands that support mobile broadband services.

20. Further, we adopt Partial Economic Areas (''PEAs''), which are a combination of Metropolitan Statistical Areas (''MSAs'') and Rural Statistical Areas (''RSAs'') (collectively MSAs and RSAs are referred to as Cellular Market Areas (''CMAs'')), as the service area for the 600 MHz Band licenses. PEAs offer a compromise between Economic Areas (''EAs'') and CMAs because they are smaller than EAs, yet ''nest'' (or fit) within EAs, and can be easily aggregated into larger areas, such as Major Economic Areas (''MEAs'') and Regional Economic Areas (''REAs'' or ''REAGs''). And like CMAs, PEAs divide urban and rural areas into separate service areas. In short, this approach will encourage entry by providers that contemplate offering wireless broadband service on a localized basis, yet at the same time will not preclude carriers that plan to provide service on a much larger geographic scale. As a result, licensing by PEAs will best promote entry into the market by the broadest range of potential wireless service providers without unduly complicating the auction. As CCA notes, PEAs ''address concerns regarding the unusual complexity of this particular auction while also retaining many of the benefits of small license areas.''

21. Commenters agree that PEAs should: (1) Nest within EAs; (2) reduce the number of service areas (as compared to the 734 CMAs); (3) reflect Metropolitan Statistical Areas (''MSAs''); and (4) be constructed from counties. CCA, NTCA, and RWA argue in favor of using the MSA boundaries that the Commission uses for its current CMA boundaries, updated with 2010 U.S. Census data for each county, because these boundaries have been ''employed in numerous previous auctions, including Auctions 73 (700 MHz), 78 (AWS–1), and 92 (Lower 700 MHz).'' On the other hand, Verizon argues that we should adopt its proposal, which uses more recent MSAs, because they are ''a much more accurate division of rural and urban areas.'' (*See* Letter from Tamara Preiss, Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12–268 (filed Mar. 20, 2014) (Verizon PEA Proposal))

22. We adopt the PEA boundaries contained in the Joint PEA Proposal (*See* Letters from C. Sean Spivey, Assistant General Counsel for CCA, Jill Canfield, Assistant General Counsel for NTCA, Caressa Bennet, General Counsel for RWA, and John A. Prendergast, Counsel to Blooston Rural Carriers, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12–268 (filed Mar. 11, 2014 and Mar. 20, 2014) (Joint PEA Proposal)). This approach will promote the simplicity and speed of the incentive auction, as well as our competitive goals. Specifically, the Joint PEA Proposal encourages broad participation by utilizing the MSA boundaries that the Commission currently uses. Because these boundaries may more closely fit many wireless providers' existing footprints, they should provide a greater opportunity for wireless providers to acquire spectrum licenses in their service areas. As Blooston notes, the

[1] In referring to ''generic licenses'' we are not referring to the actual licenses that will be assigned to winning bidders, but to standardized blocks of spectrum which will be used to represent quantities of licenses for a time during the bidding process. We emphasize that licensees will ultimately be assigned a license with a specific frequency assignment, and to the extent that bidders desire a specific frequency to meet their particular business plans, winning bidders will have the opportunity to bid for specific frequency blocks before they are assigned their licenses.

Verizon PEA Proposal has ''little in common with geographic areas where rural and competitive carriers currently offer wireless service.'' In addition, Blooston argues that using the MSAs in the Joint PEA Proposal could increase service to rural areas as compared to Verizon's proposal. Further, while the Joint PEA Proposal provides service areas small enough for smaller carriers to support, the number of total service areas is low enough to reduce the time necessary to complete the incentive auction. With respect to larger carriers, the Joint PEA Proposal ''nests'' within the EAs so it may facilitate spectrum aggregation during the auction and in the secondary market.

23. We decline to adopt the Verizon PEA Proposal. First, rather than defining the boundaries for all PEAs, Verizon only defines those areas relating to MSAs. Verizon clearly intended to provide the Commission with flexibility to consider a range of alternatives with respect to rural areas. However, implementing Verizon's PEA proposal, while respecting general principles of nesting within EAs and limiting the number of licenses in the auction, would create inefficient service areas for non-MSA-based service areas. Further, adopting the Verizon PEA Proposal may diminish competitive carrier participation in the forward auction. We disagree with Verizon that adopting the Joint PEA Proposal will lead to outdated service areas that are not based on objective criteria. The Joint PEA Proposal creates PEA service areas by utilizing 2010 U.S. Census population and county boundary data; consequently, it takes into account current population data for the counties that are included in each PEA. The PEA boundaries in the Joint PEA Proposal also are based on objective criteria. We further decline to adopt the Verizon Alternative PEA Proposal, which modifies the Joint PEA Proposal ''by adding specified counties to the PEAs representing some of the top markets.'' (*See* Letter from Tamara Preiss, Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12–268 (filed Apr. 29, 2014)). Verizon's proposed modifications to the Joint PEA Proposal also have the potential to diminish competitive carrier participation in the forward auction.

24. Although most commenters support PEAs as an alternative or compromise solution, the nationwide wireless carriers prefer EAs as the license size for the 600 MHz Band, and the smaller and/or rural carriers prefer CMAs. We decline to adopt EAs or CMAs as the licensing scheme for the 600 MHz Band. As discussed above, we need to create interchangeable spectrum blocks in order to permit substitutability among the spectrum blocks (i.e., ''generic blocks'') in the forward auction. To accomplish this goal, we can adopt only one license size for the entire 600 MHz Band and cannot offer a mix of license sizes as we have done in previous auctions. Under the PEA approach, there are 416 service areas, which is significantly fewer than the 734 CMA service areas, but more than the 176 EAs. This will reduce the exposure risk to the nationwide carriers as compared to CMAs. In addition, PEAs nest into EAs, MEAs, and REAGs, so that nationwide carriers can aggregate licenses to create the service area they desire, allowing them to take advantage of economies of scale. PEAs separate out the urban and rural areas, which should provide for greater auction participation by rural providers and allow them to bid on a geographic area license that better matches their service area.

25. We also decline to adopt broadcast Designated Market Areas (''DMAs''), nationwide, REAG, or MEA licensing approaches. Some commenters suggest that the Commission consider matching licensing areas to broadcast DMAs to simplify auction procedures by aligning the geographic areas of the forward and reverse auctions. We agree with commenters that assert that DMAs are not appropriate because they do not match wireless service footprints or existing FCC wireless service area designations. Further, we find that DMAs, like EAs, do not sufficiently address the needs of smaller and rural wireless providers, given the number of licenses we would make available. The Commission also sought comment on using nationwide and REAG service areas, but no commenters support using these service areas, and some commenters actively oppose them. T-Mobile recommends that the Commission license by MEAs—a service area size larger than EAs—because the economically efficient size of wireless service is substantially larger than individual EAs, and MEAs will reduce transaction costs and help wireless companies achieve economies of scale. T-Mobile notes that smaller licenses, such as PEAs, are manageable and would not create a significant exposure risk under certain conditions. For the reasons discussed above, using smaller, PEA service areas strikes the appropriate balance and will allow both smaller and larger wireless carriers to obtain licenses that best align with their respective business plans.

26. *Licensing Outside the Continental United States.* The Commission sought comment on licensing of the 600 MHz Band outside the continental United States and in the Gulf of Mexico. For Alaska, Copper Valley Wireless supports licensing Alaska on a CMA basis. RWA (formerly RTG) initially recommended that we license using Alaska Boroughs, which divide the state based on population density, and in any case, use service areas no larger than CMAs. Subsequently, RWA (along with CCA, NTCA, and Blooston) filed the Joint PEA Proposal, which proposes to divide Alaska into four PEAs. Recognizing that Alaska faces uniquely challenging operating conditions for deploying and operating networks, adopting the Joint PEA Proposal endorsed by smaller and rural carrier associations should best address these concerns. The Alaskan PEA boundaries closely approximate the CMA boundaries in Alaska that providers support. We note that to the extent bidders are interested in providing service in Alaska using smaller service areas than PEAs, they may use both pre- and post-auction mechanisms (such as bidding as a consortium and/or partitioning spectrum in a service area) to create the specific area they wish to serve.

27. For the Gulf of Mexico, we will follow the established policy and license the Gulf as a separate license that will be comprised of the water area of the Gulf of Mexico starting 12 nautical miles from the U.S. Gulf Coast and extending outward. Similarly, we will license Guam, the Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, and American Samoa as we have in previous auctions, which is consistent with the Joint PEA Proposal.

28. *Statutory Requirements.* We conclude that our action satisfies the Spectrum Act requirement that the Commission consider assigning licenses that cover geographic areas of a variety of different sizes. Based on the extensive record developed in this proceeding, we have carefully considered assigning licenses using a variety of different geographic area sizes. As stated above, however, we cannot offer a mix of license sizes as we have done in previous auctions without endangering our goal of repurposing spectrum through this auction: Using one license size (PEAs) is essential to creating interchangeable spectrum blocks, which in turn are critical elements of the 600 MHz Band Plan developed to promote a successful incentive auction. We note that various mechanisms are available to carriers that wish to serve larger or smaller geographic areas.

29. We also conclude that licensing the 600 MHz Band on a PEA basis is

consistent with the requirements of section 309(j) because it will promote spectrum opportunities for carriers of different sizes, including small businesses and rural telephone companies. Just as larger carriers can aggregate EAs into larger geographic areas, PEAs are small enough to allow bidders to acquire a limited coverage area—often only a few counties—which should enable small businesses and rural carriers to compete with larger carriers in these areas. Further, if bidders want to acquire licenses for smaller geographic areas, they can make use of the partitioning and disaggregation rules. Although the use of smaller geographic service areas, such as CMAs, could potentially encourage participation by smaller providers and support greater variation in the amount of repurposed spectrum from area to area, on balance offering licenses for a large number of very small geographic service areas would be inconsistent with our auction design goals of simplicity and speed. First, we must use fewer service areas because the time necessary to close the incentive auction increases dramatically as the number of licenses increases. As discussed above, we are designing the forward auction for speed. Further, more service areas could complicate potential bidders' efforts to plan for, and participate in, the auction for related licenses, potentially affecting the success of the auction. More service areas could also complicate subsequent service deployment.

4. Market Variation

30. The 600 MHz Band Plan we adopt can accommodate market variation in order to avoid restricting the amount of repurposed spectrum that is available in most areas nationwide. We intend to offer a uniform number of 600 MHz spectrum licenses in most markets across the country, but the 600 MHz Band Plan will enable us to offer some impaired spectrum blocks, or alternatively, fewer spectrum blocks, in constrained markets where less spectrum is available. We find that accommodating market variation is necessary. If the 600 MHz Band Plan could not accommodate some market variation, we would be forced to limit the amount of spectrum offered across the nation to what is available in the most constrained market (the ''least common denominator''), even if more spectrum could be made available in the vast majority of the country. By allowing for market variation in our 600 MHz Band Plan, we can ensure that broadcasters have the opportunity to participate in the reverse auction in markets where interest is high. As a result, more spectrum can be made available nationwide in the forward auction.

31. We recognize that there are certain advantages to having a generally consistent band plan. In particular, limiting the amount of market variation will limit the amount of potential co- and adjacent channel interference between television and wireless services in nearby areas (''inter-service interference''). Furthermore, limiting the amount of variation will help licensees achieve economies of scale when deploying their 600 MHz networks. Therefore, we will accommodate market variation to a limited extent only. In no case will we offer *more* spectrum in an area than the amount we decide to offer in most markets nationwide. Rather, we will offer the same amount of spectrum nationwide in all areas where sufficient spectrum is available. In constrained markets where less spectrum is available, we will offer impaired blocks or fewer blocks than we offer in most markets nationwide.

32. The decision to accommodate market variation raises a number of issues, including how to prevent inter-service interference consistent with the requirements of the Spectrum Act, how much market variation to accommodate under different spectrum recovery scenarios, where to place television stations in the 600 MHz Band if necessary in constrained markets, and whether and how to offer impaired spectrum blocks in the forward auction. Here, we explain the process by which we will resolve these issues and establish rules and auction procedures related to inter-service interference. Specifically, following this Order, we plan to issue an order that establishes the methodology for preventing inter-service interference. That methodology will govern post-auction co- or adjacent-channel operation of television and wireless services, including operation of new 600 MHz licensees in these areas (i.e., additional rules for licensees that hold impaired 600 MHz licenses). We will issue that order concurrent with issuing the *Incentive Auction Comment Public Notice* (''*Comment PN*'') inviting comment on final, specific auction procedures. This approach will ensure that potential bidders in both the forward and reverse auctions have a clear understanding about how we will protect against inter-service interference in the 600 MHz Band, and have an opportunity to comment on how such protection should be taken into consideration in the auction process.

33. The *Comment PN* will seek comment on aspects of market variation and inter-service interference that affect the incentive auction, such as how much market variation to accommodate under different spectrum recovery scenarios, where to place television stations in the 600 MHz Band in constrained markets, if necessary, and whether and how to auction impaired spectrum blocks. We will resolve these issues in the *Incentive Auction Procedures Public Notice* (''*Procedures PN*''). The approach we adopt will appropriately balance the costs and benefits of having a nationwide band plan versus accommodating market variation.

34. Although we defer establishing the methodology by which we will prevent inter-service interference so that we can do so based on a fully developed record with meaningful public input, we provide guidance on several matters in this Order. First, to prevent inter-service interference to television stations, 600 MHz licensees with impaired licenses may be required to operate within smaller boundaries than the entire area for which they hold a license. We will provide forward auction bidders with sufficient information both before and after the incentive auction to determine whether they are bidding on, or hold, an impaired license. Licensees with impaired licenses will be limited to operation within the boundaries permitted under the inter-service interference rules we adopt (''permitted boundaries''). Thus, for example, licensees with impaired licenses will be allowed to operate at the power and out-of-band emission (''OOBE'') limits authorized by our technical rules only to the permitted boundaries of the impaired licenses, even if the actual boundaries of their license areas extend further. Likewise, such licensees will be required to meet the build-out requirements only for the area they are permitted to serve within each license area.

35. Second, television stations operating on a co- or adjacent channel to a new 600 MHz licensee in a nearby market will be limited in their ability to expand their facilities following the incentive auction. In these markets, some broadcasters will be operating adjacent to or co-channel to wireless licensees. Such television licensees will not be permitted to expand their noise-limited service contours if doing so would increase the potential for interference to a wireless licensee's service area. We recognize that there may be extraordinary circumstances beyond the control of a television licensee in which it must involuntarily relocate its facilities or cannot replicate its service area on its new channel after

the repacking process without expanding its contour in the direction of the wireless license area. Because this type of modification would affect both the television licensee and the wireless licensee, we expect these cases will need to be evaluated on a case-by-case basis, and will carefully consider requests for waiver of our rules in such situations. We encourage television and wireless licensees to work cooperatively to find an equitable solution should this situation arise.

5. Guard Bands

36. As permitted by section 6407(a), we incorporate guard bands into our 600 MHz Band Plan to prevent harmful interference between licensed services. Commenters strongly support the use of such guard bands. We adopt a guard band between television and wireless operations that ranges from seven megahertz to 11 megahertz, depending on the amount of spectrum cleared, as discussed below. We adopt a uniform duplex gap of 11 megahertz for every clearing scenario, and uniform three megahertz guard bands to protect against interference between licensed WMTS services on channel 37 and adjacent wireless services. The Spectrum Act specifically authorizes the FCC to implement band plans with guard bands, subject to a ''technically reasonable'' restriction. We interpret the statute to affirm the Commission's discretion to employ guard bands in exercising its spectrum management authority. Establishing these guard bands not only protects against harmful interference between the 600 MHz service and adjacent licensed services, but also helps to ensure that the 600 MHz spectrum blocks that we offer in the forward auction are as interchangeable as possible, consistent with our auction goals. Guard bands also will bolster innovation and investment by unlicensed devices. In that regard, section 6407(c) of the Spectrum Act specifically authorizes ''the use of such guard bands for unlicensed use.''

37. As discussed above, the incentive auction presents the unique challenge of not knowing in advance how much spectrum will be repurposed, and the 600 MHz Band Plan we adopt is therefore flexible enough to accommodate different spectrum recovery scenarios. The guard bands are tailored to the technical properties of the 600 MHz Band under each scenario. In some scenarios, converting six megahertz television channels to paired five megahertz blocks would leave ''remainders'' of spectrum smaller than six megahertz. Auctioning these remainders would be inconsistent with our decision to license the 600 MHz Band in paired five megahertz spectrum blocks, and would needlessly complicate the auction design. Accordingly, such remainders are incorporated into the guard bands. As a result, the guard band between television and 600 MHz downlink varies in size to some extent under different spectrum recovery scenarios.

38. Guard band size is subject to the statutory ''technically reasonable'' restriction we address below. Importantly, it also is limited by our goals for the incentive auction. The statute requires that the forward auction proceeds cover the costs of incentive payments to clear broadcasters from the 600 MHz Band and other identified costs. The amount of spectrum available to generate such proceeds decreases with increases in guard band size. In other words, the bigger the guard bands, the less spectrum we can offer for sale in the forward auction. Alternatively, we could seek to repurpose more spectrum, but that would require clearing more broadcasters, increasing the costs of incentive payments without increasing the amount of spectrum available in the forward auction to generate the necessary proceeds. Thus, in sizing the guard bands, we must be mindful of the objective of repurposing spectrum for new, flexible uses, which can be fulfilled only if the forward auction generates sufficient proceeds. Decreases in the amount of licensed spectrum available in the forward auction also may undermine competition among licensed providers in the 600 MHz Band, another important policy objective. The guard bands we establish in the 600 MHz Band Plan factor in all of these considerations.

39. The guard bands meet the statutory requirement that guard bands be ''no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands.'' We interpret ''harmful interference'' consistent with our rules, which define harmful interference as interference that ''seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service.'' Courts have held that the use of the statutory term ''reasonable'' ''opens a rather large area for the free play of agency discretion.'' In contrast, the term ''necessary'' has been read to refer to something ''required to achieve a desired goal.'' In that regard, we reject suggestions that the statute requires the Commission to restrict guard bands to the *minimum* size necessary to prevent harmful interference. Congress knows how to draft provisions of this kind, and did not use such language in section 6407. Rather, it left determination of the appropriate size of the guard bands to prevent harmful interference to the Commission's ''reasonable'' technical judgment. Establishing ''technically reasonable'' guard bands is thus not only a matter that Congress left to the Commission's discretion, but also the type of predictive judgment that lies at the core of the agency's expertise.

40. The record supports our conclusion that the guard bands we adopt are technically reasonable to prevent harmful interference. With respect to the guard band between television and wireless operations, which may be from seven to 11 megahertz depending on the spectrum recovery scenario, most commenters support a size within that range. With regard to the duplex gap, which is 11 megahertz, a number of device manufacturers and wireless carriers support a size of 10 to 12 megahertz. Incorporating the ''remainder'' spectrum into the guard band between television and wireless operations enhances the protection against harmful interference to licensed services. The three megahertz guard band in our Band Plan between WMTS on channel 37 and 600 MHz operations likewise is supported by examination of the record.

41. Guard bands employ frequency separation to protect against harmful interference between licensed services outside the guard bands; the degree of protection generally increases with the amount of separation. The extent to which frequency separation reduces the potential for interference between a transmitter and a receiver can be measured by a well-established relationship among transmitted power spectral density, receiver selectivity, and frequency separation between transmitter and receiver. In the case of television and the 600 MHz downlink, the two specific interference cases are a television transmitter to a mobile broadband device, and a mobile broadband base station to a television receiver. Frequency dependent rejection (''FDR'') values for these two cases at different degrees of frequency separation show significant differences in likely interference. Taken together, the results of these two interference cases corroborate our decision that the technically reasonable guard band size between television and the 600 MHz downlink is seven to 11 megahertz, depending on the particular band plan scenario.

42. Transmit and receive filters often contribute significantly to interference protection, and accordingly we also

consider the capabilities of mobile device filters in the case of television and the 600 MHz downlink. The transition band, or separation needed for significant filter rejection, can be as small as seven megahertz with reasonable cost, complexity, and size, but increasing the transition band size up to 11 megahertz reduces the filter cost, complexity, and size and enables a greater variety of filter technologies to be considered. Consideration of this determination together with our FDR analysis confirms that a guard band size between television and wireless operations of seven to 11 megahertz is technically reasonable.

43. With respect to the duplex gap, many FDD technologies, including FD–LTE, allow simultaneous transmission and reception. Because the transmitter and receiver are co-located, however, there is a potential for self-interference (i.e., harmful interference within the device). For this reason, the FDD device contains a receive and a transmit filter designed to operate together to reduce the likelihood of such interference. The two filters depend on frequency separation, often referred to as the ''duplex gap,'' to operate properly. Factors that affect the impact of frequency separation are the transmitter's Out of Band Emissions (''OOBE'') and filter capability. With regard to the former, a duplex gap of up to 11 megahertz, depending on the spectrum recovery scenario, is reasonable to prevent third order intermodulation products adjacent to the transmit signal from overlapping the frequency region of the receive signal. With regard to filter capability, in order to be as large as the achievable transition band, and considering the high rejection needed to prevent self-interference, the duplex gap should be at least 11 megahertz. Consideration of these two factors together confirms that the duplex gap in our 600 MHz Band Plan, which is 11 megahertz, is technically reasonable to prevent harmful interference.

44. We reject arguments that the Commission should establish larger guard bands to facilitate their use by unlicensed devices. For the reasons discussed above, doing so would threaten our ability to meet our goals in the incentive auction. Moreover, guard bands larger than those incorporated in our 600 MHz Band Plan would not satisfy the requirements of section 6407(b). The statutory ''technically reasonable'' restriction was a compromise between one legislative proposal that would have required all repurposed spectrum to be licensed and other proposals that would have designated or reallocated repurposed spectrum specifically for unlicensed use. That compromise permits the establishment of guard bands, and the use of such guard bands for unlicensed use, but requires that the guard bands be no larger than the Commission determines is technically reasonable for the specific purpose of preventing harmful interference between licensed services outside the guard bands. Thus, we reject suggestions that section 6407(c) implicitly requires us to size guard bands to facilitate unlicensed use without regard to their effect in preventing harmful interference. Such arguments would effectively negate Congress's express directive in section 6407(b) regarding ''size of guard bands.'' We also reject NCTA's argument that the duplex gap is not a ''guard band'' and, therefore, need not be sized in accordance with section 6407(b).

6. Band Plan Technical Considerations

a. Pass Band Size and Mobile Filter Considerations

45. The 600 MHz Band Plan we adopt has at most a 60 megahertz pass band size, which can be accommodated by using multiple filters. The specific size of the pass band for the 600 MHz Band Plan depends on the amount of spectrum we can ultimately make available in the forward auction. Based on the results of our technical analysis, we agree with the commenters that assert that the maximum pass band size for current technology is roughly four percent of the center frequency for a single filter. However, we also agree with commenters who point out that this need not limit the 600 MHz Band Plan pass band size, as multiple duplexers can be used. Therefore, filter pass band size is not a limit on the pass band size for our 600 MHz Band Plan.

b. Mobile Antenna Considerations

46. We will not limit the amount of paired spectrum we make available because of mobile antenna concerns. We agree with Ericsson, T-Mobile and others that although more paired spectrum in a single band decreases antenna performance to some extent, it is better nonetheless to make more paired spectrum available. For example, the propagation of the 600 MHz Band is such that even if repurposing a large amount of spectrum has a coverage impact, the coverage would still be as good as the 700 or 800 MHz Bands. The relatively small potential costs of degradation in antenna performance are outweighed by the utility of repurposing spectrum. Further, these issues can be addressed using a tunable antenna or other antenna technologies. Therefore, we will not limit the amount of paired spectrum we make available because of mobile antenna concerns.

c. Intermodulation Interference

47. We will not limit the amount of spectrum available in the forward auction based on intermodulation interference concerns. We find that with appropriate frequency separation, placing television stations in the duplex gap will not cause harmful interference, should we decide to do so to accommodate market variation. We also agree with Alcatel-Lucent that a technically reasonable duplex gap, which we adopt as part of our 600 MHz Band Plan, will prevent in-band third order intermodulation products from falling in the downlink pass band.

d. Harmonic Interference

48. Any potential harmonic interference created in the 600 MHz Band can be effectively mitigated so that it does not result in harmful interference. The risk of mobile-to-mobile harmful interference through harmonic interference is minimal. In addition, although we recognize that harmful interference within a device could occur in a carrier aggregation scenario, we agree with commenters who suggest that this potential can be mitigated in various ways. Therefore, we find that we do not need to limit the amount of spectrum we offer in the 600 MHz Band due to the potential for harmonic interference.

7. Specific Band Plan Scenarios

49. Below we discuss in detail the specific 600 MHz Band Plan scenarios we may use in the forward auction. These range from offering two sets of paired blocks to 12 sets of paired blocks, in the configurations shown above. In addition, we discuss the number of licensed blocks we can offer based on the amount of repurposed spectrum, and the size of the guard bands, including the duplex gap, under each of these scenarios.

50. We note that we do not offer a scenario for fewer than two sets of paired blocks or more than 12 sets of paired blocks because the costs outweigh the benefits of offering only one set of paired blocks, given that we would need to clear five television channels in this scenario. Further, we decline to create scenarios for more than 12 sets of paired blocks, i.e., using more than a 144 megahertz clearing target.

51. Specifically, we do not offer scenarios with 13 or more sets of paired blocks, due to the inefficiencies associated with the position of channel

37 (used for RAS and WMTS) in the 600 MHz Band. To offer 14 sets of paired blocks, we would need to place one downlink block above channel 37 and the rest of the downlink blocks below channel 37, resulting in an additional duplexer to support only this one block. Therefore, in this case the costs outweigh the benefits of placing only one downlink block above channel 37.

a. Two Sets of Paired Blocks (42 Megahertz Repurposed)

52. Under this scenario, we create two sets of paired blocks from 42 megahertz of repurposed spectrum. We establish an 11 megahertz duplex gap, which is large enough to ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allows for a feasible transition band for the transmit and receive filters. We also use an 11 megahertz guard band between the 600 MHz downlink and television operations, which provides reasonable rejection and allows for an achievable transition bandwidth in the mobile filters. This scenario requires 10 megahertz filter pass bands and 31 megahertz of antenna bandwidth, which no commenters suggest present technical difficulties.

b. Three Sets of Paired Blocks (48 Megahertz Repurposed)

53. The Band Plan scenario for three sets of paired blocks will be used if we have 48 megahertz of repurposed spectrum. Under this scenario, we establish an 11 megahertz duplex gap, which is large enough to ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allows for a feasible transition band for the transmit and receive filters. We create a seven megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth. This scenario requires 15 megahertz filter pass bands and 41 megahertz of antenna bandwidth, which no commenters suggest present technical difficulties.

c. Four Sets of Paired Blocks (60 Megahertz Repurposed)

54. Under this scenario, we create four sets of paired blocks from 60 megahertz of repurposed spectrum. We create an 11 megahertz duplex gap, which is large enough to ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allows for a feasible transition band for the transmit and receive filters. We also create a nine megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth. This scenario requires 20 megahertz filter pass bands and 51 megahertz of antenna bandwidth, which no commenters suggest present technical difficulties.

d. Five Sets of Paired Blocks (72 Megahertz Repurposed)

55. The Band Plan scenario for five sets of paired blocks will be used if we have 72 megahertz of repurposed spectrum. Under this scenario, we establish an 11 megahertz duplex gap, which is required in this case to ensure there is no overlap of third order intermodulation products between transmit and receive channels and allow for a transition bandwidth that can be supported by all mobile filter technologies. We establish an 11 megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth. This scenario requires 25 megahertz filter pass bands and 61 megahertz of antenna bandwidth, which no commenters suggest present significant technical difficulties.

e. Six Sets of Paired Blocks (78 Megahertz Repurposed)

56. Under this scenario, we create six sets of paired blocks from 78 megahertz of repurposed spectrum. We create an 11 megahertz duplex gap, which, as discussed above, is required to ensure there is no overlap of third order intermodulation products between transmit and receive channels and allow for a transition bandwidth that can be supported by all mobile filter technologies. We establish a seven megahertz guard between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth. This scenario has a 30 megahertz pass band in the uplink and downlink bands.

57. Some commenters suggest we should limit paired spectrum to 25 megahertz pass bands (i.e., five sets of paired blocks) due to mobile filter limitations. However, we reject this limitation because we recognize that technology improves over time and 30 megahertz mobile filter pass bands may become feasible, and, the 600 MHz Band could be implemented with multiple filters (duplexers) if necessary.

58. This scenario requires 71 megahertz of antenna bandwidth, which is somewhat above the approximately 60 megahertz limit some commenters propose for the 600 MHz Band. As discussed above, we reject this limit and agree with T-Mobile that any performance degradation will be small (less than 1 dB) and can be mitigated by using tunable antennas or other technologies.

59. Finally, some commenters suggest the uplink pass band should be limited to 25 megahertz due to the potential for harmonic interference with the BRS/EBS band. As discussed above, the likelihood of such interference is low, and it does not prevent use of the spectrum; it only limits the potential for carrier aggregation with the BRS/EBS band. This potential limitation is outweighed by the benefit of making more spectrum available, and as a result, we determine that we should not limit the size of the paired bands if enough repurposed spectrum is available.

f. Seven Sets of Paired Blocks (84 Megahertz Repurposed)

60. The Band Plan scenario for seven sets of paired blocks will be used if we have 84 megahertz of repurposed spectrum. Under this scenario, we establish an 11 megahertz duplex gap, which, as discussed above, will ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allow for a transition bandwidth that can be supported by all mobile filter technologies. We create a three megahertz guard band between the mobile downlink and WMTS services in channel 37, which as discussed above, will minimize the likelihood of harmful interference to WMTS devices. We also note that this three megahertz guard band combined with channel 37 forms an effective nine megahertz guard band between the downlink band and television operations, which, as discussed above, provides reasonable rejection and allows for a feasible transition bandwidth.

61. This scenario has a 35 megahertz pass band in both the uplink and downlink bands, and requires 81 megahertz of antenna bandwidth in a static approach. As discussed above, this configuration exceeds the pass band sizes and antenna bandwidth limits proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

g. Eight Sets of Paired Blocks (108 Megahertz Repurposed)

62. Under this scenario, we create nine sets of paired blocks from 108 megahertz of repurposed spectrum. We create an 11 megahertz duplex gap, which will ensure there is no overlap of third-order intermodulation products between transmit and receive channels, and allow for a feasible transition bandwidth. Under this scenario, we establish two three megahertz guard bands between the mobile downlink band and WMTS services in channel 37 (both above and below channel 37), which will minimize the likelihood of harmful interference to WMTS devices. We also establish an 11 megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth, as discussed above.

63. This scenario has a 40 megahertz pass band in the uplink band, and two pass bands in the downlink band (30 megahertz above channel 37 and 10 megahertz below channel 37), which will require implementing two to three duplexers. Under a two duplexer approach, the band would be split into 30+30 megahertz and 10+10 megahertz. Although a 30+30 megahertz duplexer exceeds the 25 megahertz pass band discussed above, alternate technologies such as lithium niobate may allow for larger pass bands (up to 36 megahertz). Although lithium niobate offers lower Q values and therefore potentially larger transition bands, as can be seen in the diagram below, the 30+30 megahertz filter would be 33 megahertz from television operations, allowing a very large transition band for this filter; while the 10+10 megahertz duplexer would need an 11 megahertz transition bandwidth, which is feasible today. Alternatively, this scenario could be implemented using three duplexers, with two duplexers in the 30+30 megahertz portion. Under either a two or three duplexer approach, the duplex spacing of the lower 10+10 megahertz portion would be different from the upper 30+30 megahertz portion. This does not present an implementation challenge; in the past 3GPP has approved a band with different duplex spacing for different blocks within the band.

64. In addition to creating a 40 megahertz pass band in the uplink band, this configuration requires 103 megahertz of antenna bandwidth in a static approach, but only 73 megahertz in a tunable approach. As discussed above, this configuration exceeds the pass band sizes proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, and in the Order, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

h. Nine Sets of Paired Blocks (114 Megahertz Repurposed)

65. The Band Plan scenario for nine sets of paired blocks will be used if we have 114 megahertz of repurposed spectrum. As discussed above, we establish an 11 megahertz duplex gap to ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allow for a feasible transition bandwidth. In this scenario, we create two three megahertz guard bands between the mobile downlink and WMTS services in channel 37, both above and below channel 37, which will minimize the likelihood of harmful interference to WMTS devices. We establish a seven megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth.

66. This scenario has a 45 megahertz pass band in the uplink band and two pass band in the downlink band (25 megahertz above channel 37 and 20 megahertz below channel 37), which can be implemented with two duplexers, 25+25 megahertz and 20+20 megahertz, within the capabilities of current mobile filter technology. This plan requires 88 megahertz of antenna bandwidth using a tunable antenna, and may have some degradation. As discussed above, this configuration exceeds the pass band sizes and antenna bandwidth limits proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

i. Ten Sets of Paired Blocks (126 Megahertz Repurposed)

67. Although commenters focus on how to configure a band plan for 120 megahertz of repurposed spectrum or less, we provide scenarios for more than 120 megahertz should we have sufficient repurposed spectrum and decide to offer more than 120 megahertz in the forward auction. As discussed above, we note that we have not yet determined our initial clearing target, so we may not necessarily offer these scenarios in the forward auction.

68. Under this scenario, we create 10 sets of paired blocks from 126 megahertz of repurposed spectrum. As discussed above, we create an 11 megahertz duplex gap in this case to ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allow for a feasible transition bandwidth. In this scenario, we create two three megahertz guard bands between the mobile downlink band and WMTS services in channel 37 (both above and below channel 37), which as discussed in the Order, will minimize the likelihood of harmful interference to WMTS devices. We also create a nine megahertz guard band between the downlink band and television operations, which provides reasonable rejection and allows for a feasible transition bandwidth for all filter technologies, as discussed above.

69. This scenario has a 50 megahertz pass band in the uplink band, and two pass bands in the downlink band (30 megahertz below channel 37 and 20 megahertz above channel 37), which, as in the 108 megahertz scenario above, could be implemented with two or three duplexers. This scenario requires 93 megahertz of antenna bandwidth assuming a tunable antenna, and may have some degradation. As discussed above, this configuration exceeds the pass band sizes and antenna bandwidth limits proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, and in the Order, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

j. Eleven Sets of Paired Blocks (138 Megahertz Repurposed)

70. The Band Plan scenario for 11 sets of paired blocks will be used if we have 138 megahertz of repurposed spectrum. In this scenario, we create an 11 megahertz duplex gap, which will ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allow for a feasible transition bandwidth. In this scenario, we establish two three megahertz guard bands between the mobile downlink band and WMTS services in channel 37—both above and below channel 37—which, as discussed above, will minimize the likelihood of harmful interference to WMTS devices. We also create an 11 megahertz guard band between the downlink band and television operations, which, as discussed above, provides reasonable

rejection and allows for a feasible transition bandwidth.

71. This scenario has a 55 megahertz pass band in the uplink band, and two pass bands in the downlink band (40 megahertz and 15 megahertz), which would most likely be implemented with three duplexers. This scenario requires 98 megahertz of antenna bandwidth assuming a tunable antenna, and may have some degradation. As discussed above, this configuration exceeds the pass band sizes and antenna bandwidth limits proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

k. Twelve Sets of Paired Blocks (144 Megahertz Repurposed)

72. The Band Plan scenario for 12 sets of paired blocks will be used if we have 144 megahertz of repurposed spectrum. In this scenario, we create an 11 megahertz duplex gap, which will ensure there is no overlap of third order intermodulation products between transmit and receive channels, and allow for a feasible transition bandwidth. In this scenario, we establish two three megahertz guard bands between the mobile downlink band and WMTS services in channel 37—both above and below channel 37—which, as discussed above, will minimize the likelihood of harmful interference to WMTS devices. We also create a seven megahertz guard band between the downlink band and television operations, which, as discussed above, provides reasonable rejection and allows for a feasible transition bandwidth.

73. This scenario has a 60 megahertz pass band in the uplink band, and two pass bands in the downlink band (50 megahertz and 10 megahertz), which would most likely be implemented with three duplexers. This scenario requires 103 megahertz of antenna bandwidth assuming a tunable antenna, and may have some degradation. As discussed above, this configuration exceeds the pass band sizes and antenna bandwidth limits proposed by some commenters to address mobile filter, antenna bandwidth, and/or harmonic interference concerns. For the reasons discussed above, we decline to limit the amount of paired spectrum we will offer in the forward auction, should we have enough repurposed spectrum available.

B. Repacking the Broadcast Television Bands

74. Repacking involves reorganizing television stations in the broadcast television bands so that the stations that remain on the air after the incentive auction occupy a smaller portion of the UHF band, thereby freeing up a portion of that band for new wireless uses. In repacking, the Commission will exercise its longstanding spectrum management authority, as it has in prior actions such as the digital television transition, as well as the specific grant of authority in the Spectrum Act. The Spectrum Act imposes express requirements on that exercise of authority; in particular, it makes repacking ''subject to international coordination along the border with Mexico and Canada'' and requires ''all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69.''

75. The selection of winning reverse auction bids will depend in part on the Commission's ability to assign television channels to the stations that are not relinquishing their spectrum usage rights. Because participation in the reverse auction is voluntary, the option for active bidders to stay in their pre-auction band must remain available. To ensure this option is available, the feasibility of assigning a channel in the pre-auction band must be checked for each non-participating station and each active bidder before each auction round. The reverse auction and the repacking process are, therefore, interdependent; for the incentive auction to succeed, they must work together.

76. Speed is critical to the successful implementation of the incentive auction. If the reverse auction bidding takes an unreasonably long time to complete because of the time required to determine whether there is an appropriate channel for each station that has not relinquished its spectrum usage rights, then the viability of the auction as a whole will be threatened. Our repacking methodology, therefore, must be capable of analyzing complex technical issues in a timely manner, that is, fast enough not to unduly slow down the bidding process. Certainty also is vital: because the reverse auction outcome depends on repacking decisions, the results of the repacking process cannot be tentative or indefinite after the auction is complete.

1. Repacking Process Overview

77. The implementation of the repacking process is driven by the Spectrum Act's express requirements, as well as by auction design considerations. During the reverse auction bidding process, it will undertake a ''repacking feasibility check'' to ensure that each station that will remain on the air after the incentive auction is reassigned to a channel that satisfies the statutory preservation mandate. After the final stage rule is satisfied and bidding stops (but before the incentive auction concludes), channel assignments will be optimized and finalized. This approach will enable rapid evaluation of bids during the reverse auction and will provide certainty that a channel that complies with the requirements imposed by the Spectrum Act and our rules is available for every station that remains on the air following the incentive auction.

78. Prior to the commencement of the reverse auction, the staff will determine the coverage area and population served as of February 22, 2012 (the date of the enactment of the Spectrum Act) of every television station whose coverage area and population served the Commission will make all reasonable efforts to preserve in the repacking process, using the methodology described in the Office of Engineering and Technology Bulletin No. 69 (''OET–69''). With respect to certain facilities the Commission is exercising discretion to protect it will determine the coverage area and population served as of dates appropriate to those facilities. Based on this data, the staff will develop constraint files for each station using the approach set forth in the *Repacking Data PN* (*See Incentive Auction Task Force Releases Information Related to the Incentive Auction Repacking,* ET Docket 13–26, GN Docket No. 12–268, Public Notice, 28 FCC Rcd 10370 (2013)), with some exceptions. Specifically, an ''interference-paired'' file will be produced that includes, for each station, a list of all the other television stations that could *not* be assigned to operate on the same channel or on an adjacent channel with each particular station. Additionally, a ''domain'' file will be produced that includes, for each station, a list of all the channels to which the station could be assigned considering ''fixed constraints,'' that is, incumbents in the bands other than domestic television stations that are entitled to interference protection at fixed geographic locations and on specific channels. The two files, collectively the ''constraint files,'' will be used to check the feasibility of

assigning permissible channels to stations that will remain on the air. The constraint files will enable the repacking methodology to rapidly evaluate during the reverse auction bidding process whether a channel could feasibly (that is, consistent with the preservation mandate of the Spectrum Act) be assigned to each station in light of the other stations that must also be assigned channels at that point during the auction.

79. The Commission adopted the approach to developing constraint files proposed in the *Repacking Data PN,* except that the determination of coverage area and population served, as required by the Spectrum Act, will not be calculated based on a single channel, or ''proxy'' channel, in each band. Instead, the Commission will calculate the coverage of a station and the interference between stations on every possible channel that could be assigned to the station during the repacking process. Further, the data inputs and assumptions that appear in the *Repacking Data PN* will be updated to reflect the decisions adopted in this Order.

80. During the initialization step of the reverse auction, the initial ''clearing target'' for how much television spectrum will be repurposed through the reverse auction and the repacking process will be determined based on broadcast stations' collective willingness to relinquish spectrum usage rights at the opening prices announced by the Commission. The clearing target will dictate the total number of remaining channels available for the repacking process.

81. At the start of the reverse auction bidding process, broadcast stations will fall into two general categories: Non-participating stations that will remain on the air after the incentive auction, and participating stations that may or may not remain on the air (including stations that may elect to change bands from UHF to VHF or high VHF to low VHF), depending on the reverse auction outcome. The repacking feasibility checker will ensure that every non-participating station can be assigned a television channel in its pre-auction band. Each time a participating station drops out of the auction, the repacking feasibility checker will determine whether a channel is available for each individual station that continues to participate in the bidding. The bidding will continue within a stage until every station has either dropped out of the auction or had its bid accepted. Final channel assignments will not be made during the bidding stage.

82. After the bidding in the reverse auction ends, the forward auction bidding will begin. As the forward auction bidding proceeds, whether the final stage rule is met will be evaluated. If the rule has not been satisfied, a new stage of the auction will commence with a lower spectrum clearing target. If the rule has been satisfied, the channel assignments for each station that will remain on the air will be optimized to ensure an efficient post-incentive auction channel assignment scheme, taking into consideration factors such as minimizing relocation costs. The Commission will seek comment on the details of the channel assignment optimization in the *Comment PN.*

2. Implementing the Statutory Preservation Mandate

a. ''All Reasonable Efforts''

83. The Spectrum Act gives the Commission broad discretion to ''make such reassignments of television stations that the Commission considers appropriate'' ''[f]or purposes of making available spectrum to carry out the forward auction.'' Congress imposed a qualification on this general mandate: ''the Commission must make *all reasonable efforts* to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin No. 69 of the Office of Engineering and Technology of the Commission.''

84. The Commission interprets our ''all reasonable efforts'' obligation in light of the statutory context. Thus, in determining what is ''reasonable,'' the Commission should take into account the other objectives in the Spectrum Act, including the goal of repurposing spectrum—an objective which clearly militates in favor of an efficient repacking method. This reading is consistent with the rest of the Spectrum Act. Section 6403(a)(1), for example, directs the Commission to ''conduct a reverse auction . . . *in order to make spectrum available* for assignment through a system of competitive bidding.'' It is also consistent with Congressional intent. The Commission therefore finds that the statute requires that it use all reasonable efforts to preserve each station's coverage area and population served without sacrificing the goal of using market forces to repurpose spectrum for new, flexible uses.

85. Accordingly, the Commission rejects NAB's contention that § 6403(b)(2) of the Spectrum Act is a ''hold harmless'' provision that requires the Commission to identify ''extraordinary'' or ''truly exceptional'' circumstances before altering a station's coverage area and population served. The Commission notes that courts have interpreted the phrases ''all reasonable efforts'' or ''every *reasonable* effort'' to ''require[] that a party make every reasonable effort, not every *conceivable* one.'' Congress included the term ''reasonable'' in the statute because it anticipated that broadcasters' interests would not be the only interests that the Commission would have to consider in the repacking process. Had Congress instead intended to ensure the primacy of broadcasters' interests over all others, as NAB and others contend, Congress could have so specified. It did not. Instead, it required the Commission to make ''all reasonable efforts'' to preserve their coverage areas and populations served, a qualification that requires of the Commission a certain level of *effort* rather than a particular outcome. Accordingly, the Commission does not believe the statute requires us to precisely and strictly preserve broadcasters' coverage areas and populations served without considering the other objectives in the Spectrum Act.

86. Nor does the legislative history support broadcasters' interpretation of § 6403(b)(2). Comcast claims that ''[d]uring markup, Congress specifically rejected alternate language that could have allowed the auction and repacking process to permanently reduce broadcasters' existing coverage, as long as the process resulted in 'substantially similar' coverage.'' Comcast's argument misses the mark. The cited legislative history informs our reading of ''coverage area and population served'' in section 6403(b)(2). The Commission interpreted those terms to require efforts to preserve service to those viewers who had access to a station's signal within its protected coverage area as of February 22, 2012—an outcome that is consistent with Congress' rejection of the term ''substantially similar coverage.'' By contrast, ''the reasonableness requirement [in § 6403(b)(2)] by its plain terms is a measure of effort—i.e., the actions taken to achieve a goal—and not of the outcome itself.'' As CEA explained in its comments, ''[t]he question is not whether the Commission will protect broadcasters''; rather, ''[t]he question is whether the Commission is obligated to protect *all* of the existing levels of service without considering the impact on the goal of spectrum clearing.'' The Commission agrees with CEA that the answer to that question ''is plainly no.''

87. The Commission clarifies, however, that it is not adopting a ''balancing approach'' that weighs the objective of preserving coverage area and population served against the Spectrum Act's general objective of repurposing spectrum. Rather, the other objectives in the Spectrum Act inform our assessment of the degree of effort required to protect the coverage areas and populations served of broadcast licensees, that is, whether we have satisfied the ''all reasonable efforts'' mandate. This approach is consistent with the Supreme Court's directive that ''[s]tatutory construction . . . is a holistic endeavor'' such that ''[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.'' By way of example, efforts that would preserve broadcasters' coverage areas and populations served, but would prevent us from repurposing spectrum, would not be ''reasonable'' in the larger context of the Spectrum Act. The Commission, therefore reject Comcast's view that § 6403(b)(2) requires us to ''focus exclusively on preserving the integrity of broadcasters' existing coverage area and population served.''

88. Similarly, by taking into account the other objectives in the Spectrum Act, the Commission is not ''pretend[ing] that the word 'all' does not exist in the phrase 'all reasonable efforts.' '' ''All'' as used in § 6403(b)(2) modifies ''reasonable''; it measures quantity of effort, but does not affect the degree of effort required by the statute. ''All'' therefore requires only that we make every *reasonable* effort to preserve broadcasters' coverage area. Under our reading of the statute, the Commission could not satisfy its statutory obligation if it undertook only one of several reasonable actions to preserve broadcasters' coverage areas and populations served. ''All,'' however, has no bearing on whether any particular effort is ''reasonable'' and thus does not require the Commission to ignore the other objectives of the Spectrum Act when conducting the repacking process.

b. OET–69 and *TVStudy*

89. OET Bulletin No. 69, which is titled ''Longley-Rice Methodology for Evaluating TV Coverage and Interference,'' provides guidance on the implementation and use of the Longley-Rice propagation methodology for evaluating television coverage and interference. The methodology described in OET–69 predicts a television station's coverage area and population served, both of which the Commission must make all reasonable efforts to preserve under the Spectrum Act. OET–69 specifically states that a computer program is necessary to implement the methodology. That computer program takes certain inputs, including population data, geographical terrain data, and data about stations' transmission facilities, and applies the methodology described in OET–69 to generate a station's predicted coverage area and population served. The computer program that implements OET–69 thus produces ''output''—or more specifically, a description of a station's predicted coverage area and population served within its noise-limited contour.

90. The Commission will use *TVStudy,* the updated computer program that implements the methodology described In OET Bulletin No. 69, in the incentive auction. As discussed, *TVStudy's* capability to create and use a uniform nationwide grid for analysis of coverage area and population served is essential to the repacking process. In addition, the software previously used to implement OET–69 cannot support the incentive auction because it cannot undertake, in a timely fashion, the volume of interference calculations necessary to ensure that all stations that will remain on the air following the auction are assigned channels in accordance with the provisions of the Spectrum Act. Further, the proposed updates to the input values used in applying the OET–69 methodology allow for a more accurate analysis of each station's coverage area and population served as of the date of the enactment of the Spectrum Act and eliminate the use of input values that are now obsolete. Thus, with one exception that is explained, the Commission adopted the updated input values proposed in the *TVStudy PN* (*Office of Engineering and Technology Releases and Seek Seeks Comment on Updated OET–69 Software,* ET Docket No. 13–26, GN Docket No. 12–268, Public Notice, 28 FCC Rcd 950 (2013)).[2] It finds that using *TVStudy* with updated input values to implement OET–69 will support the unique requirements of the incentive auction while satisfying our statutory obligation to make ''all reasonable efforts'' to preserve television stations' coverage area and population served as of February 22, 2012. The Commission finds that the Spectrum Act not only permits us to use *TVStudy,* but—because the statute requires the Commission to make all reasonable efforts to preserve broadcast stations' coverage areas and populations served as of February 2012—requires us to update the software and data inputs necessary to implement the methodology set forth in OET–69 to predict coverage as of that date as accurately as possible.

91. The Longley-Rice methodology described in OET–69 divides the area within a digital television station's noise-limited contour into approximately square ''grid cells'' to evaluate signal strength, or coverage, and any interference. The computer program previously used to implement the OET–69 methodology generates station-specific grid calculations based on each station examined. More specifically, the earlier software creates a new and unique grid for each station centered on the station's transmitting facilities. Signal strength and potential interference from other stations are calculated for each cell in that particular grid. Because each grid is unique to each station, however, no two station grids are typically the same, and signal strength and interference calculations for one station cannot be used to calculate coverage and interference for another station, even where they cover the same or portions of the same geographic area. The cell-level data are not consistent from one station to another. Moreover, the earlier computer software lacks the capability to save grid calculations. Given these two limitations (i.e., the lack of uniform grid cells and the inability to save calculations), the earlier computer software would have to re-create an individual station's grid each and every time it has to analyze a possible channel assignment in the repacking process. In other words, an individual station's grid may have to be re-created thousands of times before a determination is made as to which channel a station may be assigned following the auction.

92. In contrast, *TVStudy* has the capability to apply the OET–69 methodology to calculate signal strength and evaluate interference using a single, common grid of cells common to all television stations. Based on the data derived from the common grid, *TVStudy* can undertake pairwise interference analyses of every station that will

[2] Updated versions of *TVStudy* were announced by public notice in April, July, August, and September 2013. *See Office of Engineering and Technology Releases Updated TVStudy Software,* ET Docket No. 13–26, GN Docket No. 12–268, Public Notice, 28 FCC Rcd 5520 (2013); Repacking Data PN, 28 FCC Rcd 10370; *Office of Engineering and Technology Releases Updated TVStudy Software,* ET Docket No. 13–26 and GN Docket No. 12–268, Public Notice, 28 FCC Rcd 12327 (2013); *Office of Engineering and Technology Releases TVStudy Version 1.2.8 and Announces Future Updates Will Be Posted to the Web,* ET Docket No. 13–26 and GN Docket No. 12–268, Public Notice, 28 FCC Rcd 12979 (2013). The most up-to-date version of TVStudy is posted at *http://data.fcc.gov/download/incentive-auctions/OET–69/.*

remain on the air after the incentive auction and generate data that identifies combinations of stations that can (or cannot) co-exist on the same channel or adjacent channels. These data are used to generate the constraint files that will be employed in the repacking process. Further, unlike the earlier software, much of the cell-level data produced by *TVStudy* are cached, or saved. Hence, the repacking methodology need not re-create a station's unique grid each time it examines a possible channel assignment, and the numerous interference calculations can be run in a much shorter period of time. These attributes of *TVStudy* (i.e., the common grid and caching) are essential to the timely analysis of feasible channel assignments.

93. The Commission concludes that the statutory language allows the Commission to update the computer software and input values used to implement the OET–69 methodology while adhering to the methodology described in OET Bulletin No. 69. The statutory language is ambiguous, and it is reasonable to read it narrowly. Indeed, the Commission finds unreasonable NAB's interpretation, which would compel the Commission to rely on outdated computer software and data to implement that methodology. Accordingly, the Commission interprets the statutory phrase ''methodology described in OET Bulletin No. 69'' to refer to the particular procedures for evaluating television coverage and interference that are provided for in that bulletin, not the computer software or input values used to apply that methodology in any given case. The Commission's interpretation is consistent with the common meaning of the word ''methodology.'' Distinguishing between a ''methodology'' and the ''software'' and ''inputs'' used for applying that methodology also is consistent with the ordinary meaning of the latter words, as well as with common understanding. Courts have recognized similar distinctions between administrative methodologies and the computer programs and data inputs used to apply them. Likewise, evaluating TV coverage and interference using the methodology described in OET–69 requires a computer program and data inputs, but they are tools for applying the evaluation procedure, not the procedure itself.

94. Even though computer software and certain inputs that are necessary to implement OET–69 are referred to in OET–69, the Commission finds they are not part of the OET–69 ''methodology.'' Examination of OET–69 itself bears out this distinction. OET–69 characterizes the computer program as a tool for applying the Longley-Rice propagation model, explaining that ''[a] computer is needed . . . because of the large number of reception points that must be individually examined.'' OET–69 also makes clear that the computer program for applying OET–69 is subject to change—for example, it refers to ''the computer program now used by the Media Bureau to evaluate applications . . . as well as predecessors of that program,'' and to ''[t]he Fortran code currently used by the Media Bureau to evaluate new proposals''—and provides instructions on how to use different computer programs to apply the Longley-Rice model. Indeed, OET–69 contemplates that others will utilize their own computer programs to implement the OET–69 methodology and provides suggestions for obtaining information on using the Longley-Rice model in doing so. The Commission's bureaus have used different computer programs to implement OET–69. In contrast, the methodology itself has remained the same through multiple versions of OET Bulletin No. 69 (other than corrections and updated Internet references). The Commission further notes that the rules distinguish between ''the procedure set forth in OET Bulletin No. 69'' and the inputs for applying it; for example, in evaluating post-digital TV transition allotments, the rules require the use of ''the 2000 census population data'' when calculating interference pursuant to the methodology in OET–69. Thus, the Commission agrees with CTIA and others that *TVStudy* is merely an updated tool for implementing the methodology in OET–69. Likewise, the updated input values that the Commission adopted are not part of the OET–69 methodology within the meaning of the statute.

95. While NAB argues that the statutory phrase ''methodology described in OET Bulletin 69'' is ''a term of art that was well established in 2012'' to include the present software and input values, NAB cannot point to a single instance of the FCC using, let alone defining, that phrase prior to enactment of the Spectrum Act. NAB does identify a number of decisions in which the Commission characterized use of specific Census and terrain data and treatment of ''flagged'' results as part of a ''methodology.'' However, only one of those decisions referred specifically to OET–69. In that decision, the Commission did not define or describe the OET–69 ''methodology'' but rather used the term ''methodology'' colloquially to refer to inputs associated with application processing. Accordingly, the Commission rejects NAB's argument.

96. In addition to being consistent with the statutory language, our interpretation furthers the statutory requirement to ''make all reasonable efforts to preserve, as of the date of enactment of this Act [February 22, 2012], the coverage area and population served of each broadcast television licensee'' by allowing us to update the computer program and input values for applying the OET–69 methodology. For example, updated inputs like the 2010 U.S. Census data more accurately reflect the latest population changes, which show an increase in population nationwide of approximately ten percent between 2000 and 2010, as well as changes in population distribution. Use of 2000 Census data, as NAB urges, would preserve television service as of year 2000 rather than as of the date of enactment of the Spectrum Act. Had Congress intended to prevent any updates to the software and input values used to implement the OET–69 methodology, it could have expressly directed the FCC to use the methodology described in OET–69, including the February 6, 2004 version of one of the Commission's computer programs implementing that methodology and the inputs used as of that date. Instead, Congress required ''all reasonable efforts'' to preserve each station's coverage area and population served as of February 22, 2012, a mandate that necessitates the use of updated software and inputs with greater utility and accuracy. In light of this mandate, the Commission disagrees with NAB that Congress was interested not in ''the realities of population growth'' but in ''reduc[ing] coercive pressure on stations to give up their licenses.'' The Commission cannot conclude that Congress intended to require us to maintain and somehow adapt an obsolete computer program that relies on inaccurate data—particularly given the threat that doing so could leave some viewers without television service.

97. The Commission's reading is also consistent with other relevant statutory obligations and with Commission precedent. It has a well-established duty under the Administrative Procedure Act (''APA'') to ''analyze . . . new data'' when faced with existing data that ''are either outdated or inaccurate.'' NAB's interpretation of section 6403(b)(2) is in direct conflict with our duty under the APA; it would require us to ignore new Census data despite significant population changes between 2000 and

2010, more accurate and updated terrain data, and corrected technical information. Consistent with its APA and other statutory obligations, the FCC has consistently relied on updated, accurate data and procedures when possible. In the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), for example, Congress directed the Commission to ''take all actions necessary . . . to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals [of Grade B intensity].'' In implementing that statutory mandate, the Commission adjusted the Longley-Rice methodology for UHF stations but left VHF calculations essentially unchanged. The DC Circuit upheld that decision, finding that the Commission acted reasonably because its chosen methodology increased the accuracy of the model. NAB tries to distinguish SHVIA on the basis that it expressly requires the Commission to ''establish procedures for the continued refinement of the application of the model by the use of additional data as it becomes available''—a provision which the Spectrum Act lacks. The Commission is not persuaded. The underlying purpose of SHVIA was to identify ''unserved households'' eligible for the rebroadcast of distant network signals—an inherently pro-consumer objective. Similarly, in the Spectrum Act, Congress required us to make ''all reasonable efforts'' to preserve coverage area and population served as of February 22, 2012—an obligation that depends heavily on having accurate data for that date. The Commission cannot fulfill the statutory mandate using outdated data. The 2000 Census data that NAB advocates using fails to reflect the increase in predicted population served that 85 percent of stations have experienced since that time.

98. NAB also objects that the proposed updates ''are unlawful because they do not preserve broadcast licensees' coverage areas and populations served as predicted on February 22, 2012''—predictions which it asserts necessarily depend on calculations pursuant to OET–69, as it was implemented on that date. On the contrary, the Commission read the date in section 6403(b)(2) to modify the preservation mandate, not the reference to OET–69. In other words, we read the statute to require us to preserve the actual coverage areas and populations served by broadcast stations on February 22, 2012, not (as NAB contends) to preserve the coverage areas and populations served as calculated by using the input values and the version of the computer program implementing OET–69 in use by one of the Commission's bureaus on February 22, 2012. Use of the outdated computer program and input values would not fulfill our statutory mandate to preserve the ''coverage area and population served'' as of February 22, 2012, but rather the service provided long before the Spectrum Act's enactment.

99. The Commission disagrees with NAB that *TVStudy* redefines or reduces the coverage area of a significant number of stations in comparison with the earlier version of the OET–69 computer program. OET took care in designing and developing *TVStudy* to ensure that it faithfully implements the OET–69 methodology, provides results that closely match those of the earlier computer software (notwithstanding updates that improve accuracy), and avoids bias that would systematically reduce broadcast stations' coverage areas and populations served. In support of its position, NAB, for example, predicts that station KMAX–TV in Sacramento, California, would suffer a 15 percent loss in the population served if we use *TVStudy* rather than the earlier OET software. However, OET's analysis using *TVStudy* predicts that KMAX–TV will experience an eight percent increase in population served. Further, OET's analysis using *TVStudy* and the updated inputs adopted in this Order shows that 88 percent of full service stations will experience an increase in population served, while only 12 percent show some decrease.

100. NAB also asserts that *TVStudy* departs from the OET–69 methodology because it considers LPTV stations and TV translators in its evaluation of service and interference analysis. NAB is correct that *TVStudy* has the capability of studying the interference from LPTV and TV translators. However, NAB is incorrect in assuming that that option will be used in the repacking process.

101. In addition, NAB claims OET ''failed to conduct any cost-benefit analysis for its proposed changes.'' According to NAB, ''[t]he proposed changes to OET–69 and the attendant uncertainty w[ill] drive up the costs for broadcast licensees, as they scramble to acquaint themselves with the new methodology, without any countervailing benefit.'' That is demonstrably not the case. The benefits of using *TVStudy* clearly outweigh the costs. The use of *TVStudy* and the updated input values is essential to the repacking process and to fulfilling the statutory preservation mandate.

102. Moreover, NAB's criticisms of OET's efforts to provide support for *TVStudy* are baseless. Copies of *TVStudy* have been made available to the public continuously since its original release in February 2013. The *TVStudy* software was released in a form allowing it to be easily installed and run on inexpensive, commonly available consumer computers. While OET has corrected minor errors and improved the functionality of *TVStudy* since its original release, OET has informed the public of these updates by releasing Public Notices, or (as announced in September 2013) through updates on the Commission's Web site. Commission staff have provided and continue to provide ongoing support to users seeking to implement and utilize *TVStudy,* including participating in an online discussion forum (list-serve) open to the public. As the developer of *TVStudy,* OET has provided support to users of the software by responding to inquiries on the listserve. Thus, broadcasters have had ample opportunity to evaluate and familiarize themselves with the updated software and input values. Accordingly, contrary to NAB's claims, there should be no uncertainty associated with the use of *TVStudy.*

103. NAB complains that *TVStudy* contains ''scores of soft switches,'' which contain variables or inputs that can lead to different predictions of coverage area and population served depending on how the switches are set. Most of these switches reflect variables that are not meant to be changed from their default values, were included in the software to maximize flexibility, and have not changed since the original release of *TVStudy.* In the *TVStudy PN,* OET tentatively defined the eight soft switches for the inputs that the Commission adopted. The release of this Order finalizes the variables or inputs associated with the key soft switches. In addition, a Public Notice released by OET concurrently with the Order provides guidance regarding how to set the switches for the remaining variables or inputs.

104. As interested parties continue to work with *TVStudy,* there may be further opportunities for OET to correct minor errors in, or to improve the functionality of, the software, consistent with this Order. Accordingly, OET may continue to make improvements and other changes to *TVStudy* after release of this Order that are necessary and appropriate to correct minor errors or improve functionality, provided such changes are consistent with this Order.

However, the Commission recognizes the importance of finalizing *TVStudy* well in advance of the auction. The Commission directed OET to finalize *TVStudy* no later than the release of the *Procedures PN.* It also directed OET to release a detailed summary of baseline coverage area and population served by each television station to be protected in the repacking process, and to provide an opportunity for additional public input.

105. NAB further argues that it is ''arbitrary and capricious'' for the Commission to utilize *TVStudy* only in the incentive auction context. According to NAB, if the Commission adopts *TVStudy,* ''the result would be that on the very same day that the auction is commenced using [*TVStudy*], a person or entity could file an application for a new television station, yet be required by the Commission to use the [old software].'' This assertion lacks merit because the Commission has not yet addressed whether *TVStudy* will be used for purposes other than the repacking process. The Commission notes that, contrary to NAB's assumption, the Commission does not always use the same computer software to implement OET–69. The Commission's bureaus have used *different* software programs to implement OET–69: the Media Bureau has used *tv_process* to process applications for new stations and modifications, OET has used ''FLR'' for large-scale projects, like the DTV transition, and the International Bureau has used ''V-Soft Probe'' for international coordination efforts. Each type of software provides a different utility that serves the purposes for which it is used (i.e., licensing, interference and international coordination).

106. NAB and other broadcasters also raise procedural objections that lack merit. Because the Commission adopted *TVStudy* and updated input values in this Order, NAB's claim that the Commission itself must approve the use of *TVStudy* and updated input values is moot. NAB also complains that the comment cycle was too short. The Commission disagrees. The *TVStudy PN* allowed 45 days for comments and an additional 15 days for reply comments. In addition, parties have had additional time to work with the updated software and inputs (and to submit *ex parte* filings) since the comment period closed. While NAB claims that ''formal'' notice and comment procedures were required instead of Public Notices, the purpose of the APA's notice and comment requirement has been fully satisfied by OET's issuance of the *TVStudy PN* and its publication in the **Federal Register**. The Commission has a robust record on the issues raised in the *TVStudy PN* and it has taken the comments and *ex parte* filings into account in adopting the use of *TVStudy* and the updated values in this Order.

107. *Use of 2010 U.S. Census Data.* Having addressed the broadcasters' statutory and other arguments that the Commission cannot use updated software or input values in applying the OET–69 methodology, the Commission turn to the specific updates to the input values associated with *TVStudy* proposed in the *TVStudy PN.* First, the Commission adopted use of the latest available population data from the 2010 U.S. Census. The old software used population data from the 2000 U.S. Census or earlier. According to the 2010 U.S. Census, the country's population has grown 9.7 percent since the 2000 Census, an increase of 27.3 million people. In addition, the distribution of the population across the country has shifted.

108. NAB argues that the Commission should continue to use 2000 Census data, claiming that its preliminary analysis of *TVStudy* with 2010 population data shows that 14 percent of broadcast licensees will experience a decrease in predicted population served. Though our evaluation of *TVStudy* shows a similar apparent reduction, it also shows that *88* percent of full-service broadcasters will experience an increase in predicted population served. Moreover, while NAB contends that ''[t]hese changes are contrary to the Commission's statutory obligation to preserve 'population served,''' NAB fails to acknowledge that using 2010 Census data, the most recent population data available, does not result in actual population loss but rather an accurate representation of a broadcast station's population served *as of 2010.* In other words, broadcast stations experiencing a ''loss'' in predicted population served were, in fact, serving a smaller population on February 22, 2012, than predicted using 2000 Census data because the 2000 Census data is outdated.

109. *Use of One Arc-Second Terrain Elevation Data.* The Commission adopted use of terrain elevation data with a nominal resolution of one arc-second (approximately 30 meters) in most areas of the country. The one arc-second dataset, which is derived from smaller scale topographic maps with more granular elevation data than datasets used by earlier implementations of the OET–69 methodology, will allow for more accurate calculation of the effect of terrain on propagation of television signals. The U.S. Geological Survey (''USGS'') maintains a database with this terrain information, which is updated on a two-month cycle to integrate newly available and improved data. The earlier software used to implement OET–69 relied on a terrain elevation database of three arc-second resolution (approximately 90 meters). The USGS no longer distributes, maintains, or supports a three arc-second database, which also has a history of errors and no mechanism to check the validity of those errors or to correct them. The Commission finds no reason to continue using an obsolete database when there is an expert federal agency that offers up-to-date and more precise terrain data.

110. NAB opposes this change and argues that OET–69 expressly requires use of a three arc-second database. The Commission acknowledges that OET–69 mentions that ''the FCC computer program is linked to a terrain elevation database with values every three arc-seconds of latitude and longitude.'' This is a descriptive statement about an input database, however, not a prescriptive element of the OET–69 methodology. The Commission does not interpret the description of an input linked to the earlier software as a methodological requirement or a restriction against updating that software to incorporate more precise, accurate, and current data.

111. NAB further maintains that switching from three to one arc-second terrain data will result in predicted losses in population served for 85.1 percent of all broadcast stations—results that NAB argues ''simply cannot be squared with Congress's directive to preserve broadcast licensees' service populations, as calculated using the version of OET–69 in effect on February 22, 2012.'' NAB did not provide any analytical information to support its calculations. By contrast, our analysis predicts that about one-half of the stations examined will maintain or slightly improve population coverage in comparison to what would have been predicted using the three arc-second terrain data, while one-half are predicted to experience a slight decrease in coverage. Further, staff analysis shows that the results using the one arc-second terrain database are more accurate than those of the three arc-second database.

112. *Antenna Beam Tilt Values.* The Commission adopted use of actual beam tilt data, as those data are specified by the licensees and shown in the Commission's Consolidated Database System (''CDBS''), instead of an across-the-board-assumed downtilt figure. This will allow for a more accurate depiction

of the predicted coverage of, and interference from, each television station. As the *TVStudy PN* recognized, the computer program previously used to implement the OET–69 methodology ignores this input from CDBS and instead uses the same electrical beam tilt for every location, regardless of the actual beam tilt value, which can result in a coverage projection that may effectively ''miss'' some of the population served. In contrast, *TVStudy* uses the actual amount of electrical downtilt as specified by the broadcast licensees in CDBS, generating a more accurate model of coverage and interference effects and therefore better implementing the methodology in OET–69.

113. *Coordinates, Depression Angles, and Incorrect Data.* Instead of continuing to truncate or round geographic coordinates to the nearest second, as was the practice in earlier versions of software implementing OET–69, the Commission adopted use of full-precision data in coverage and population served projections. By increasing the precision of geographic coordinates, *TVStudy* eliminates rounding errors and provides at least three additional orders of precision. NAB opposes this change because it estimates that it will decrease predicted population served for 37.3 percent of stations and increase predicted population served for 38.1 percent of stations. The Commission finds NAB's argument unpersuasive; there is no technical or computational basis to intentionally reduce the numerical precision of the geographic coordinates used to calculate station coverage and population served as of February 22, 2012. The FCC has a well-established statutory obligation to address known inaccuracies in existing data. Therefore, the Commission adopted the proposal set forth in the *TVStudy PN.*

114. For the same reasons, the Commission adopted the *TVStudy PN* proposal to correct the previous software's error in calculating depression angles. Some versions of the computer program previously used to implement OET–69 erroneously calculated depression angles based on the antenna height above ground, rather than the height above mean sea level, which, as the *TVStudy Public Notice* recognized, can cause the radiated power toward the cell under study to be incorrectly calculated. This can result in an incorrect representation of a station's coverage area and population served.

115. The *TVStudy PN* also recognized that there may be instances where the information entered into the FCC's broadcast station database, CDBS, may not be fully accurate. This could lead to incorrect results when the values in that database are used to predict coverage and interference. While OET sought comment on methods to detect and correct inaccurate data, the commenting parties did not address this issue. As discussed, full power and Class A stations will be required to certify the accuracy of the information in CDBS prior to the incentive auction.

116. *Longley-Rice Error Warnings or ''Flags'' Treatment.* The Commission declined to adopt an alternative treatment of results that are flagged as ''unusable or dubious'' by the Longley-Rice algorithm underlying the OET–69 methodology. Currently, the assumption is that the cells with such warning flags have coverage, even if surrounding cells are predicted to lack coverage or are subject to interference.

117. The Commission is not persuaded that a change in the underlying assumption of error warnings or ''flags'' is necessary or appropriate at this time. As noted in the *TVStudy PN,* error warnings have been treated differently depending on context. For example, the presence of an error ''flag'' is ignored in applying the methodology of OET Bulletin Nos. 72 and 73. That assumption is consistent with the purpose of OET–72 and OET–73, which were designed to identify whether service is available at a *specific location* (household). OET–69 is designed to predict service availability within *a station's coverage area generally,* at points that are not specific households but are intended to be representative of a surrounding area or cell. The assumption of coverage in that context is consistent with the Commission's traditional assumption that service is available throughout a station's coverage area and that broadcasters locate and configure their transmitters to maximize coverage. Thus, despite the fact that the current treatment of error warnings may overestimate coverage areas, the Commission finds no compelling reason to change our treatment of the Longley-Rice error flags at this time. Further, it does not believe that assuming service for cells with error flags will significantly impact our ability to efficiently repack television stations, because this assumption does not increase the coverage area that the Commission must make all reasonable efforts to preserve. Accordingly, the Commission will continue to assume coverage where Longley-Rice error warnings appear.

118. On May 8, 2014, NAB filed a 129-page submission purporting to demonstrate that *TVStudy* ''produce[s] flawed results'' by comparing *TVStudy* and ''the existing OET–69 software.'' Despite the fact that OET first publicly released *TVStudy* over 15 months ago, NAB filed on the eve of the Sunshine period, limiting analysis of its submission and depriving interested parties of an opportunity for comment. Nonetheless, analysis indicates that NAB's submission is flawed. First, NAB used the wrong legacy software for its comparison. NAB maintains that ''the version of OET–69 in existence on February 22, 2012 (understood to include OET Bulletin 69 and its implementing software)'' must be used in the repacking process. NAB does not specify *which* of the legacy software programs for applying the OET–69 methodology in use as of that date it believes must be used. If Congress had intended to require the use of particular software, however, presumably it would have required the use of OET's ''FLR'' software (which has been publicly available on OET's Web site for years), as the statute refers specifically to OET as the originator of OET–69. Yet NAB apparently used a version of the Media Bureau's application processing software for its comparisons to *TVStudy.* Second, NAB used the wrong input values for its comparison. NAB maintains that it used ''the settings OET actually proposes to use.'' NAB used such settings selectively, however, skewing the results of its comparison. For example, NAB maintains that use of *TVStudy* results in a loss of population served for approximately 52 percent of stations studied, yet NAB failed to update Census data reflecting an increase in the U.S. population between 2000 and 2010. OET's analysis using the settings OET proposed to use (and that we adopted in this Order) results in a population increase for 85 percent of full power stations. Third, NAB is mistaken that *TVStudy* must be flawed because it does not replicate the results produced by earlier software for applying OET–69. The various legacy software programs used by the Commission's different bureaus do not always produce identical results: Identical results are unnecessary when the software is being used for different purposes. *TVStudy* is not designed to produce the identical results produced by earlier software, although it does produce very similar results. *TVStudy* is configured differently from earlier software so that it can support the repacking process using the most up-to-date and accurate information and technical evaluation capabilities and, therefore, necessarily does not produce exactly the same results.

c. Preserving Coverage Area

119. The Commission adopted the proposal to interpret the statutory term ''coverage area'' consistent with the definition of ''service area'' in OET–69 and § 73.622(e) of the Commission's rules with regard to full power stations. Accordingly, the Commission will consider a full power station's coverage area to be the geographic area within its noise- limited F(50,190) contour where the signal strength is predicted to exceed the noise-limited service level. Consistent with the methodology in OET–69, areas within a station's noise-limited contour where its signal strength is below the noise-limited signal strength level, which typically occurs due to terrain obstructions or other propagation factors, will not be considered to be part of the station's coverage area. The coverage areas of full power stations that operate distributed transmission systems (''DTS'') using multiple transmitters will be determined in accordance with the definition of authorized service area and method for determining DTS ''authorized service areas'' in 47 CFR 73.626(b), (c) and (d) of the rules. Further, it is appropriate to use a DTS station's authorized service area as currently set forth in our rules as the definition of the coverage of such stations. While OET–69 does not specifically address DTS stations, the Commission finds that considering a DTS station's service area to be the combined coverage of its transmitters, as limited by the maximum distances specified in the rules, is consistent with that methodology.

120. As proposed in the *NPRM,* the Commission will make all reasonable efforts to preserve Class A stations' protected contours. The Commission disagrees with commenters who argue that we must protect the entire area covered by Class A stations' signals, i.e., the noise-limited contour within which viewers may be able to receive the signal. Because our rules only protect Class A stations' protected contours from interference, defining their coverage areas as their noise-limited contours would provide these stations with greater interference protection after the repacking process than they enjoy today. In the absence of an explicit statutory directive, the Commission finds no basis to do so. Our approach makes our interpretation of the statutory term ''coverage area'' consistent for full power and Class A stations, both of which will enjoy protection in the repacking process for the same area that now receives interference protection under our rules.

121. In preserving a station's coverage area, the Commission will replicate that station's contour on its new channel. As noted earlier, OET–69 sets forth the methodology for determining the contours that define the boundaries of a station's coverage area. As proposed in the *NPRM,* the Commission adopted the ''equal area'' approach for replicating the area within the station's existing contour as closely as possible using the station's existing antenna pattern. Assuming a station maintains its other existing technical parameters, i.e., location, antenna height and antenna pattern, the Commission will permit the station to adjust its power on the new channel until the geographic area within the station's noise-limited or protected contour (depending on whether the station is full power or Class A) is equal to the area within the station's original contour on its pre-auction channel. This approach will allow stations to preserve their existing coverage areas using antennas that are practical to build, so that stations will be able to actually construct their new facilities.

122. The Commission adopted the proposal to protect in the repacking process the existing coverage areas of stations operating under a waiver of the antenna height above average terrain (''HAAT'') or antenna height limits. The Commission will also protect the existing coverage areas of stations that operate under a waiver of effective radiated power (''ERP'') limits. In addition, the Commission will make all reasonable efforts to preserve the existing coverage areas of stations that operate above the HAAT and/or ERP limits pursuant to § 73.622(f)(5), except that such operations will not be protected to the extent that they exceed the maximum power limits specified in the Commission's rules without regard to HAAT. Stations licensed pursuant to a waiver of the applicable ERP limit will be permitted to continue operations at power levels up to the existing authorized ERP.

123. To the extent that a broadcaster participates in the auction through a UHF-to-VHF or a high-VHF-to-low-VHF bid, the Commission will make all reasonable efforts to preserve its coverage area and population served. However, because these stations will be relocating to a different band, the Commission anticipates that it may be difficult for them to maintain their antenna pattern on the new channel. Accordingly, as discussed, the Commission will allow successful UHF-to-VHF and high-VHF-to-low-VHF bidders to request alternative facilities that may result in increases in their coverage areas, as long as the increases do not cause interference to other stations.

124. Although broadcasters generally support our decision to permit stations assigned to new channels to continue to use their existing antenna patterns with power adjustments, the Affiliates Associations contend that the Commission should not consider a station's signal to be receivable at all locations within its noise-limited contour, thereby ignoring terrain losses. They argue that because the effect of terrain on signal reception is the *sine qua non* of the OET–69 model, ignoring terrain losses and assuming that a station's signal is receivable at all locations within its noise-limited contour would eviscerate the statutory requirement to preserve coverage areas using the OET–69 methodology. They acknowledge that there inevitably will be some changes in coverage area due to channel reassignments, but contend that the Commission can only satisfy the preservation mandate in the statute if it limits such changes to no more than 0.5 percent. The Affiliates Associations alternately propose that the Commission allow stations ''flexibility in specifying alternative facilities that increase a station's coverage area if that is necessary to fully preserve the coverage area and population served of a station following repacking.''

125. While we agree that the goal of the repacking process should be preservation of stations' pre-repacking coverage areas, the Commission emphasize that, as the Affiliates Associations acknowledge, it may not be physically practical or possible for some stations to build modified facilities that result in less than a 0.5 percent change in the geographic area served within the original contour. Because radio signals propagate differently on different frequencies, the signal of a station reassigned to a different channel will generally not be receivable in precisely the same locations within a station's contour as it was in its original channel. Instead, there may be signal losses due to terrain in different areas within the contour. Such losses are unavoidable, so exact replication of coverage within a station's contour is not always attainable under the laws of physics. The Commission also notes that the Affiliates Associations have mischaracterized the proposal to preserve stations' coverage areas in the repacking process. The Commission is not assuming that ''coverage area'' includes all of the area within a station's contour (i.e., that a station's signal is receivable at all locations within the contour). Rather, the Commission will adhere to the OET–69 methodology,

which considers variations in signal availability resulting from terrain losses, when determining the ''coverage area'' and ''population served'' that must be preserved in the repacking process. Thus, the Commission will not include areas where a signal is not receivable due to terrain losses in the coverage area to be preserved.

126. The Commission declines to adopt the proposals advanced by the Affiliates Associations. First, it does not interpret the Spectrum Act to prohibit anything greater than a *de minimis* change in a station's coverage area. Rather, as discussed, the Commission agrees with T-Mobile that ''the reasonableness requirement [in § 6403(b)(2)] by its plain terms is a measure of effort—i.e., the actions taken to achieve a goal—and not of the outcome itself.'' Hence, the demand that the outcome of the repacking process be no more than a 0.5 percent change in the geographic area served, finds no support in the statute.

127. Nor does the Spectrum Act require us to expand stations' contours to account for terrain losses. The Commission adopted the ''equal area'' approach for replicating the area within a station's contour using the station's existing antenna pattern. This approach is designed to allow a station to use its existing facilities, allowing for some adjustments, to serve the same geographic area on the channel to which it is reassigned in the repacking process. The Affiliates Associations support our approach, but seem to demand that we go even further by expanding a station's contour to compensate for terrain losses resulting from propagation differences on the reassigned channel are predicted to reduce the coverage area *within* the contour. While not entirely clear, the Affiliates Associations seem to demand that the Commission preserve the same square kilometers of coverage, not a station's actual coverage area prior to repacking. Such an approach finds no support in the Spectrum Act, which specifically directs us make ''all reasonable efforts to *preserve* . . . the coverage area . . . of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69.'' Consistent with our approach to preserving population served, the Commission interprets the statute to direct us to make all reasonable efforts to protect the geographic area that a station actually served as of February 22, 2012. This approach, which is consistent with our efforts to replicate coverage areas during the digital transition, is designed to ensure that after the repacking process, broadcasters will continue to reach the same viewers, and that viewers will continue to have access to the same stations. Expanding contours, as the Affiliates Associations' request, would thus be inconsistent with the statute, because it would not maintain the *status quo;* to the contrary, it would expand the geographic area that a station actually serves. The Affiliates Associations' proposal could provide the station with a ''windfall'' in the form of new viewers or, require us to undertake costly efforts to extend interference protection to areas with no viewers. The Commission does not believe that either of these outcomes was intended by the Spectrum Act.

128. Second, expanding contours in the repacking process is not practical or realistic, because it would compromise the repacking process and, ultimately, the success of the auction. Allowing contour extensions during the repacking process will make it more difficult to repack stations efficiently. The Commission would face the same problem if we were to prohibit any channel reassignment that resulted in anything greater than a *de minimis* change in the geographic area served. Reducing the number of potential channels significantly limits the Commission's flexibility to assign channels in the repacking process, increasing the potential costs of clearing the spectrum and decreasing the likelihood of a successful auction outcome. The Commission interpreted the statute to require that we make all reasonable efforts to preserve each station's coverage area and population served without sacrificing the goal of a successful incentive auction. The Commission adopted a number of measures that will effectively address broadcasters' concerns without compromising the auction. Under these circumstances, the Commission need not adopt the proposals advanced by the Affiliates Associations to meet the statutory mandate.

129. Third, broadcasters' concerns regarding the potential for substantial new terrain losses are exaggerated. The majority of UHF stations will be assigned to channels that are lower in the band than their original channels, because under the 600 MHz Band Plan the Commission will be seeking to repurpose UHF spectrum contiguously from channel 51 down, meaning that stations being reassigned to new channels within the UHF band generally will be assigned to channels lower in the band. Such stations are likely to experience *decreases* rather than increases in coverage lost to terrain within their contours due to the superior propagation characteristics of their lower frequencies.

130. Finally, the Commission adopted a number of measures to effectively address the Affiliates Associations' concerns. For those stations that may experience a loss of coverage due to terrain, it adopted several measures that will allow them to remedy such losses. Specifically, broadcasters will be able to file initial construction permit applications that expand their coverage area by up to one percent, as long as they do not cause new interference to any other station. In addition, if a station is dissatisfied with its new channel assignment due to terrain losses, it may seek alternative transmission facilities on a different channel, provided a channel is available and the alternative facilities meet all existing technical and interference requirements and serve the public interest. Further, if a licensee wishes to provide service to a specific area that had service on its pre-auction channel but lacks service on its new channel, it could use DTS, for example, to provide that coverage. This approach will allow us fulfill our statutory duty to make ''all reasonable efforts'' to preserve broadcast licensees' coverage area and population served, as required by section 6403(b)(2) of the Spectrum Act.

d. Preserving Population Served

131. As proposed in the *NPRM,* the Commission interprets the statutory term ''population served'' to mean the persons who reside within a station's coverage area at locations where service is not subject to interference from another station or stations, as specified in OET–69 and § 73.616(e). Commenters do not specifically address the NPRM proposal, although they express views on how the Commission should make all reasonable efforts to preserve each station's population served in the repacking process. The Commission will consider a station's ''population served'' to be the population within the station's coverage area, as that term is defined above, less any portions of the areas where interference from other stations is present as of February 22, 2012. Also, the Commission adopted Option 2, proposed in the *NPRM,* to fulfill the statutory mandate to preserve ''population served'' as of February 22, 2012. Thus, it will preserve service to the same specific viewers for each eligible station, and no individual channel reassignment, considered alone, will reduce another station's population served on February 22, 2012 by more than 0.5 percent. This approach is consistent with the standard for evaluating interference from new or

modified television operations in § 73.616(e) of the rules. As noted, the 0.5 percent level is considered to be no interference at integer precision.

132. Option 2 will best fulfill our mandate to make ''all reasonable efforts'' to preserve broadcast licensees' populations served as of the date of enactment of the Spectrum Act, for the following reasons. First, the Commission agrees with NAB and other broadcasters that § 6403(b)(2) of the Spectrum Act's charge that we ''make all reasonable efforts to preserve . . . the population served of each broadcast television licensee'' directs us to protect service to the specific viewers who had access to a station's signal as of February 22, 2012. Interpreting the preservation mandate to refer to existing viewers as of this date seems most consistent with the statutory language and legislative history, as well as Commission precedent. The statute's use of the word ''preserve'' suggests that the goal is to maintain the *status quo,* not to replace some viewers with others. That interpretation is reinforced by Congress's rejection of a bill that would have established a goal of substantial equivalence rather than preservation, as well as another bill that would have required the FCC to preserve ''interference levels with respect to [each] licensee's signal'' rather than population served. Further, the Commission historically has been concerned with avoiding disruption of service to existing viewers. Thus, while Option 1 would provide greater efficiencies because it takes into account overall reductions in interference that result when broadcast stations relinquish all of their spectrum usage rights, the Commission declined to adopt it because it would not preserve service to existing viewers as of February 22, 2012.

133. Second, Option 2 best satisfies our auction design needs. Specifically, Option 2 can accommodate pairwise interference analyses. Option 1 would require analysis of interference relationships on an aggregate rather than a pairwise basis. While Option 3 permits greater new interference than Option 2 (i.e., two percent per station versus 0.5 percent per station), it is unduly restrictive because it does not allow any ''replacement'' interference, making repacking less efficient. Accordingly, Option 2 provides the most protection to television stations' existing populations served consistent with our auction design needs.

134. Even though NAB recommends the adoption of Option 2 as the standard for ''all reasonable efforts,'' it also urges the Commission to cap the amount of total additional interference at one percent, and allow no new interference to stations that are currently experiencing ten percent or more interference within their service areas. According to NAB, these interference caps are necessary because, while an individual station can only cause a maximum addition of 0.5 percent interference under Option 2, ''stations repacked during the incentive auction process . . . would likely receive interference from multiple stations'' which, in the aggregate, could ''lead to significant viewer losses.'' Contemporaneously with the release of this Order, OET, and the Wireless, Media, and International Bureaus will be releasing a Public Notice inviting comment on a staff analysis of the potential impact of aggregate interference on television stations as a result of the repacking process. The Commission will defer a decision on NAB's proposal until the record is fully developed on the requested cap. The Commission will resolve the issue in a subsequent Order that will be released no later than the release of the *Comment PN,* and well in advance of the incentive auction.

3. Facilities To Be Protected

135. The Commission concludes that protecting certain facilities in addition to those the statute requires it to protect will serve the public interest. The Commission also explains its decision not to extend protection to certain other categories of facilities.

a. Mandatory Protection of Full Power and Class A Facilities

136. Section 6403(b)(2) of the Spectrum Act directs the Commission, in making any reassignments or reallocations under Section 6403(b)(1)(B), to ''make all reasonable efforts to preserve, as of the date of enactment of [the] Act, the coverage area and population served of each broadcast television licensee.'' A ''broadcast television licensee'' is defined as the ''licensee of—(A) a full-power television station; or (B) a low-power television station that has been accorded primary status as a Class A television licensee'' under Section 73.6001(a) of the Commission's rules. The Commission adopts the tentative conclusion that Section 6403(b)(2) mandates all reasonable efforts to preserve the ''coverage area and population served'' reflected in full power and Class A facilities (1) licensed as of February 22, 2012, the date of enactment of the Spectrum Act; or (2) for which an application for a license to cover was on file as of February 22, 2012. The Commission also adopts the tentative conclusion that the scope of mandatory protection under Section 6403(b)(2), which is limited to ''broadcast television licensees,'' defined by the Spectrum Act as full power and Class A stations only, excludes LPTV and TV translator stations. The Commission interprets this mandate to apply to full power and Class A broadcasters that do not participate in the reverse auction and full power and Class A broadcasters that participate in the reverse auction but do not submit a winning bid. The Commission also interprets this statutory mandate to apply to full power and Class A broadcasters that submit a winning bid to move from a UHF to a VHF channel or from a high VHF to a low VHF channel.

137. To ensure a stable, accurate database, and to facilitate the repacking process, all full power and Class A television stations will be required to verify and certify to the accuracy of the information contained in CDBS with respect to their protected facilities. Prior to the start of the incentive auction, the Media Bureau will issue a Public Notice announcing each station's protected facility. All full power and Class A stations will be required to submit a form (to be developed by the Media Bureau following the release of this Order) specifying any changes to the information contained in CDBS and certifying to the accuracy of the information in CDBS or provided on the form for their protected facility. The Commission delegates authority to the Media Bureau to announce by Public Notice the deadline and procedures for filing the form.

138. The Commission concludes that Section 6403(b)(2) requires all reasonable efforts to preserve only facilities that were in operation as of February 22, 2012. The full power and Class A facilities that were in operation as of February 22, 2012 are facilities that were licensed on that date or for which an application for a license to cover an authorized construction permit was on file.

139. The Commission rejects claims that Section 6403(b)(2) mandates protection of facilities authorized in construction permits as of February 22, 2012. While facilities authorized in a construction permit are protected from interference under Commission rules, the grant of a construction permit standing alone does not authorize operation of those facilities.

b. Discretionary Preservation

140. Although the Commission interprets the Spectrum Act to mandate that it protect only facilities that were in

operation as of February 22, 2012, it adopts the tentative conclusion in the *NPRM* that the Spectrum Act does not preclude us from exercising discretion to protect additional facilities beyond this statutory floor. That authority is encompassed within the Commission's broad spectrum management authority under the Communications Act.

141. As set forth more fully below, the Commission concludes that the public interest is best served by extending protection to certain categories of facilities that were not licensed or the subject of a pending license to cover application as of February 22, 2012. More specifically, the Commission will protect: (1) The small number of new full power television stations that were authorized, but not constructed or licensed, as of February 22, 2012; (2) full power facilities authorized in outstanding construction permits issued to effectuate a channel substitution for a licensed station; (3) modified facilities of full power and Class A stations that were authorized by construction permits granted on or before April 5, 2013, the date the Media Bureau issued a freeze on the processing of certain applications; and (4) Class A facilities authorized by construction permits to implement Class A stations' mandated transition to digital operations. Except in very limited circumstances discussed below, the Commission will limit discretionary protection to these categories.

142. The Commission generally will limit its discretionary protection to facilities in the preceding categories that are licensed (which in this Section of the Order encompasses both licensed facilities and those subject to a pending license to cover application), by the Pre-Auction Licensing Deadline to be announced by the Media Bureau. The Commission delegates authority to the Media Bureau to issue a Public Notice specifying the Pre-Auction Licensing Deadline. The Commission anticipates that the Public Notice will give stations at least 90 days prior notice of this deadline.

(i) New Full Power Stations

143. As proposed in the *NPRM,* the Commission will exercise its discretion to protect the new full power television stations that were authorized by construction permits, but not yet licensed, as of February 22, 2012.

(ii) Channel Substitution Construction Permits

144. The Commission will exercise its discretion to protect facilities authorized in construction permits issued to a licensed station to effectuate a substitution of a new channel for its licensed channel (a ''channel substitution'') that are licensed by the Pre-Auction Licensing Deadline rather than their facilities licensed on February 22, 2012. The fact that these channel substitution allotments were protected in the Table prior to enactment of the Spectrum Act further weighs in favor of protecting the corresponding authorized facilities.

145. Seven of the channel substitutions the Commission is electing to protect result in a station moving from a VHF to a UHF channel, which will encumber additional UHF spectrum by adding a new station to the band. If any of these stations participates in the reverse auction, it will have the opportunity to relinquish its newly allotted UHF channel through a UHF-to-VHF bid.

146. The Commission will protect channel substitution construction permits only if they are licensed by the Pre-Auction Licensing Deadline. The Commission finds that preserving a facility for the channel licensed and operating on February 22, 2012 (as required by the Spectrum Act) as well as an authorized facility for a different channel that remains unbuilt would limit its repacking flexibility without offering sufficient countervailing public interest benefits.

147. The Commission will protect the substitute channel facilities of former channel 51 licensees if they are licensed by the Pre-Auction Licensing Deadline. Because rulemaking petitions seeking to relocate stations from channel 51 are still permitted to be filed, they are not subject to the Media Bureau's April 5, 2013 freeze on the filing of certain facilities modifications, which is discussed in the following Section. Accordingly, the Commission will not impose the requirement discussed in the next Section that these facilities modifications need to be authorized in a construction permit by April 5, 2013 in order to qualify for protection.

(iii) Facility Modifications

148. The Commission concludes that it will serve the public interest to extend discretionary protection to the facilities of full power and Class A stations authorized in construction permits that were granted on or before April 5, 2013 (the date on which the Media Bureau issued a Public Notice, the *Freeze PN* imposing limitations on the filing and processing of certain applications by full power and Class A television stations in light of the forthcoming auction and the need to plan for the repacking process *See Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate,* Public Notice, 28 FCC Rcd 4364 (2013) (*Freeze PN*)), provided that the facilities are licensed by the Pre-Auction Licensing Deadline.

149. Applications that were pending on April 5, 2013 that complied with the filing limitations set forth in the *Freeze PN,* or were amended to comply, as well as later-filed applications that comply with the filing limitations, will continue to be routinely processed by Commission staff. To the extent that such applications are granted, the facilities will be protected in the repacking process, provided they are licensed by the Pre-Auction Licensing Deadline.

150. While the *Freeze PN* remains in effect, the Commission directs the Media Bureau to begin processing facilities modifications and displacement applications that were on file but were not granted by April 5, 2013 and were not amended to comply with the filing limitations set forth in the *Freeze PN.* The Commission emphasizes, however, that any such facilities, even if authorized and subsequently licensed by the Pre-Auction Licensing Deadline, will not be protected in the repacking process. However, the Commission directs the Media Bureau to process these applications, rather than instructing that they be dismissed, to afford as much flexibility to these applicants as possible.

(iv) Class A Television Stations Transitioning to Digital Service

151. As explained in the *NPRM,* Congress authorized the incentive auction in the midst of the Class A television digital transition; the deadline for Class A stations to operate on a digital-only basis is not until September 1, 2015. The Commission will exercise its discretion to protect Class A stations' initial digital facilities that were not initially licensed until after February 22, 2012, including those that were not authorized until after the *Freeze PN,* provided they are licensed by the Pre-Auction Licensing Deadline.

152. In order to qualify for protection, Class A digital facilities must be licensed by the Pre-Auction Licensing Deadline. Class A stations that have not completed the transition to digital service as of that deadline will receive protection only of their licensed analog facilities, to the extent protected in this Order. The Commission clarifies that it is not modifying the deadline for Class A stations to convert to digital service

in this Order. Licensees are free to wait until the September 2015 deadline to complete their digital transition, but will receive repacking protection only for their analog facilities consistent with the provisions of this Order.

(v) Additional Cases

153. *World Trade Center Stations.* The Commission will afford discretionary protection to stations affected by the destruction of the World Trade Center and will not require certain authorized facilities for these stations to be licensed by the Pre-Auction Licensing Deadline. The Commission will permit each of these stations to elect protection of either: (1) Their licensed Empire State Building facilities or (2) facilities at One World Trade Center (1WTC), the primary building of the new World Trade Center complex, that are authorized in a construction permit. The deadline for these stations to elect the facility to be protected in the repacking process is the Pre-Auction Licensing Deadline. To be eligible for protection under the second option, stations must obtain a construction permit for the 1WTC facilities by the Pre-Auction Licensing Deadline. Such facilities, however, are not required to be licensed by the Pre-Auction Licensing Deadline in order to be protected.

154. *Stations Reallocated Pursuant to Section 331 of the Communications Act.* The Commission will exercise its discretion to protect the facilities for new full power television stations on channel 2 at Wilmington, Delaware and channel 3 at Middletown Township, New Jersey that were allotted in 2013 pursuant to a court order. Although the Wilmington station is now licensed, the Middletown Township facility is not. The Commission will not require this station to be licensed by the Pre-Auction Licensing Deadline in order to be protected in the repacking process.

155. *KTNC–TV, Channel 14, Concord, California.* TTBG, the licensee of KTNC–TV, channel 14, Concord, California, constructed and had an application for a license to cover on file for its authorized channel 14 facility prior to February 22, 2012, but was operating at reduced power on that date (and continues to do so) due to its inability to satisfy a condition pertaining to non-interference to land mobile stations. The Commission will exercise its discretion to protect the facilities in TTBG's pending channel 14 license application, even if they are not fully operational and the station has not received a license by the Pre-Auction Licensing Deadline.

156. *KHTV–CD, Los Angeles, California.* The Commission will not protect stations that are eligible for a Class A license but that did not file an application for such license until after February 22, 2012, even if the application is granted before the auction. For the reasons discussed in detail below, however, the Commission makes one exception for KHTV–CD, Los Angeles, California.

c. Non-Final License Revocation or Downgrade Proceedings

157. The Commission clarifies that any licensee of facilities that is eligible for protection in the repacking process as set forth in this Order that is the subject of a non-final license validity proceeding or downgrade order will be protected until the proceeding or order becomes final and non-reviewable. Specifically, this treatment will apply to the facilities of licensees who have been downgraded from Class A to LPTV status, and to the facilities of full power and Class A licensees with expired, cancelled, or revoked licenses.

d. Facilities That Will Not Receive Discretionary Protection

158. The Commission will not exercise its discretion to extend protection in the repacking process beyond the facilities discussed above. Below, the Commission specifically addresses its decision not to afford protection to pending rulemaking petitions to move from a VHF to a UHF channel, out-of-core Class A-Eligible LPTV stations, LPTV and TV translator stations, and special temporary authority and experimental authorizations.

(i) Pending Channel Substitution Rulemaking Petitions

159. Section 6403(g)(1)(B) of the Spectrum Act provides that the Commission ''may not'' reassign a television licensee from a VHF to a UHF channel from the enactment date of the Spectrum Act until the completion of the incentive auction ''unless (i) such reassignment will not decrease the total amount of [UHF] spectrum made available for reallocation . . . or (ii) a request from such licensee for the reassignment was pending at the Commission on May 31, 2011.'' The Commission declines to exercise its discretion to protect the facilities requested in pending VHF-to-UHF channel substitution rulemaking requests. This includes the facilities addressed in *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Cleveland, Ohio),* Notice of Proposed Rulemaking, 26 FCC Rcd 14280 (Vid. Div. 2011).

160. The Commission disagrees with commenters who assert that Section 6403(g)(1)(B) compels the Commission to process and grant channel substitution rulemaking requests that were pending on May 31, 2011. The statute grants the Commission the discretion to reassign a licensee from VHF to UHF if either of the two statutory conditions in this provision is satisfied, but it does not mandate such reassignment. Having determined that Section 6403(g)(1)(B) does not compel grant of the pending VHF-to-UHF petitions, the Commission directs the Media Bureau to dismiss any of these petitions if issuance of an NPRM would not be appropriate. This would be the case, for example, if the proposed facility would result in an impermissible loss of existing service or the petition fails to make a showing as to why a channel change would serve the public interest. The Commission further directs the Media Bureau to hold in abeyance any remaining petitions or related rulemakings proceedings and to process them once the Media Bureau lifts the filing freezes now in place, unless the petition is withdrawn.

(ii) Out-of-Core Class A-Eligible LPTV Stations

161. With one exception, the Commission will not protect stations that are eligible for a Class A license but that did not file an application for such license until after February 22, 2012, even if the application is granted before the auction. These stations are not entitled to mandatory preservation because their Class A facilities were not licensed or the subject of a pending Class A license application as of February 22, 2012. Moreover, the Commission declines to extend discretionary protection to LPTV stations that has not filed an application for a Class A license as of February 22, 2012. Although the Commission will not protect such stations in the repacking process, it will provide them with an advanced opportunity to locate a new channel. Specifically, if such station obtains a Class A license but is displaced in the repacking process, it may file a displacement application during one of the filing opportunities for alternate channels. The Commission will, however, exercise its discretion to protect one station in this category—KHTV–CD, Los Angeles, California, licensed to Venture Technologies Group, LLC.

(iii) LPTV and TV Translator Stations

162. The Commission declines to extend repacking protection to LPTV and TV translator stations. As discussed

below, the Commission adopts measures to mitigate the potential impact of the auction and repacking process on LPTV and TV translator stations, including adopting special procedures for displaced stations to select a new channel among the limited number of channels that will remain following the repacking process. The Commission will also initiate a rulemaking proceeding after the release of this Order to consider further actions to provide regulatory relief to displaced LPTV and TV translator stations.

163. Protection of LPTV and TV translator stations in the repacking process is not mandated by Section 6403(b)(2). The protection provision applies only to ''each broadcast television licensee,'' which is defined as the ''licensee of—(A) a full-power television station; or (B) a low-power television station that has been accorded primary status as a Class A television licensee'' under Section 73.6001(a) of the Commission's rules. There is no basis in the text of section 6403(b)(2) or the pertinent statutory definitions to conclude that low power stations that have not been accorded Class A status are entitled to the protections afforded by Section 6403(b)(2).

164. Section 6403(b)(5) provides that nothing in Section 6403 shall be construed to ''alter the spectrum usage rights of low power television stations.'' This provision simply clarifies the meaning and scope of Section 6403; it does not limit the Commission's spectrum management authority.

165. The Commission likewise declines to exercise its discretionary authority to protect replacement digital low power TV translator stations authorized pursuant to Section 74.787(a)(5) of the Commission's rules (''digital replacement translators'' or ''DRTs''). As discussed below, however, in order to mitigate the potential impact of the repacking process on DRTs, the Commission will afford DRT displacement applications priority over other LPTV and TV translator displacement applications in cases of mutual exclusivity. Moreover, in connection with the rulemaking proceeding the Commission intends to initiate relating to the potential displacement of LPTV and TV translator stations, the Commission will consider whether to create a new replacement translator service for stations that experience losses in their pre-auction service areas.

166. Finally, the Commission adopts its proposal in the *NPRM* not to extend interference protection to LPTV or TV translator stations vis-à-vis Class A television stations in the repacking process. Section 336(f)(7)(B) of the Communications Act prevents the Commission from approving a modification of a Class A license ''unless the . . . licensee shows'' that its proposal would not cause interference to low power television or translator facilities authorized or proposed before ''the application for . . . modification of such a license . . . was filed.'' The Commission does not interpret this language, which grants LPTV and TV translator stations protection against changes to facilities proposed by Class A licensees, to restrict the Commission in implementing the previously unanticipated broadcast television spectrum incentive auction and repacking process authorized by Congress in the Spectrum Act.

(iv) Special Temporary Authority and Experimental Authorizations

167. Several commenters argue that Section 6403(b)(2) requires the Commission to protect not only licensed facilities as of February 22, 2012, but also any other facilities that were being used to serve viewers on that date, including facilities operating pursuant to experimental authorizations or Special Temporary Authority (''STA''). The Commission disagrees. STAs and experimental authorizations are, as their names indicate, interim, provisional, and non-permanent in nature. These authorizations also are secondary to all other authorized and licensed users, including secondary services such as the LPTV service. The Commission also declines to exercise its discretionary authority to protect such facilities.

4. International Coordination

168. The FCC is moving quickly to coordinate 600 MHz spectrum usage with Canada and Mexico and is fully complying with its obligation to ensure that spectrum reassignments and reallocations taken by the Commission are coordinated with Canada and Mexico.

169. NAB asserts in its comments on the NPRM that the Spectrum Act ''requires coordination as a precondition to repacking.'' In a 24-page document filed on the eve of the Sunshine period (thus preventing in-depth analysis and depriving interested parties of an opportunity for comment), NAB and other broadcasters claim that, ''the FCC must conclude new agreements with Canada and Mexico before conducting the incentive auction'' and that, to repack stations as part of the incentive auction, we must negotiate a ''new, pre-approved table of allotments with Canada and Mexico.'' We disagree with NAB that we must complete such coordination before the auction or the repacking process, either as a legal or a practical matter. As a legal matter, the statutory language does not impose a temporal requirement regarding coordination; rather, consistent with the ordinary meaning of the phrase ''subject to,'' we interpret the statute to mean that any reassignments or reallocations the Commission makes are governed or affected by coordination. Thus, the statute affords the FCC discretion in determining how to implement the coordination process, including the timing of that process. NAB argues to the contrary in its latest filing because agreements were reached in advance of the DTV transition, and Congress presumably was aware of that precedent when it adopted the Spectrum Act. NAB mischaracterizes the precedent of the DTV transition, and places more weight on it than it will bear. International coordination is an ongoing process; in the case of the DTV transition, coordination of some TV stations continued past the DTV transition deadline. Even if Congress could be assumed to share the NAB's subjective view of the DTV transition, however, the statutory language hardly can be stretched to require the Commission to conduct the incentive auction coordination on a schedule similar to the DTV coordination, given that international coordination by its nature involves negotiation with sovereign nations whose actions the FCC cannot control. For all of these reasons, we agree with CTIA and Verizon that preapproval by Canada and Mexico of all reassignments and reallocations is not required by the Spectrum Act.

170. Further, we disagree with NAB that as a practical matter the Commission must complete coordination, including assignment of specific channel allotments, in order to carry out the repacking process. What is required to undertake the repacking process is a mutual understanding with Canada and Mexico as to how the repacking in the United States will be conducted to protect border stations in all countries from interference, and how any possible repacking could be conducted in Canada and Mexico should either of those countries ever determine that they might want to undertake such a process. Based on the incentive auction coordination discussions to date, the mutual benefit to Canada, Mexico, and the United States to find more spectrum to meet the burgeoning demand for wireless broadband, and our shared history of cooperative spectrum coordination, we expect to reach arrangements with

Canada and Mexico that will enable us to carry out the repacking process in a manner that is fully consistent with the requirements of the statute and our goals for the auction.

171. While NAB claims that the Spectrum Act requires the Commission to conduct the incentive auction coordination the same way it conducted the DTV coordination, it also asserts that the amount of time required for the DTV coordination will make it impossible for the FCC to do so prior to the incentive auction and the repacking process. Contrary to NAB's arguments, the incentive auction is not the DTV transition: Unlike the former, the latter involved a time-consuming television station-by-television station coordination. While NAB is correct that the coordination process can take time, the FCC, as explained above, has already been engaged with Canada and Mexico on incentive auction coordination for years.

172. As the foregoing discussion clearly demonstrates, NAB's suggestion that the Commission is waiting until after the incentive auction and the repacking process to begin coordination, or that it is ''planning to reach agreements with Canada and Mexico only after the auction,'' is simply wrong. The Commission is making an all-out effort to reach arrangements. NAB's further suggestion that coordination must not be ongoing because broadcasters have not been briefed on it is also wrong. The Commission regards the confidentiality of the ongoing government-to-government incentive auction coordination discussions as critical to their ultimate success.

173. The Commission noted in the NPRM that ''modified domestic rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding use of the 600 MHz Band.'' In addition to cross-border spectrum sharing arrangements, the Commission sought comment in the NPRM on possible changes to FCC rules. While the FCC received comments regarding the arrangements, discussed above, it received none regarding possible rule changes. We have determined that minor changes to section 27.57(b) are required to include the spectrum band to be auctioned and to make the rule applicable to wireless services. Therefore, we adopt these changes.

C. Unlicensed Operations

174. The Commission will allow TV white space (TVWS) devices to operate on any unused television channels following the incentive auction. The Commission also intends to designate, after additional notice and opportunity for public input, one unused channel in the remaining television band in each area for shared use by wireless microphones and TVWS devices. In addition to access to these unused channels in the television bands, the Commission will designate the 600 MHz Band guard bands for unlicensed use nationwide and will allow unlicensed use of channel 37 in locations that are not being used for the Radio Astronomy Service (RAS) or Wireless Medical Telemetry Service (WMTS). Such use will be subject to the completion of a rulemaking proceeding that the Commission will initiate after the release of this Order to consider changes to our existing part 15 rules to further facilitate the use of TVWS devices in the remaining television spectrum and flexible unlicensed use in the 600 MHz Band guard bands and on channel 37 (600 MHz and TVWS Part 15 Proceeding). In order to provide certainty to all potential bidders and to participants in the unlicensed device ecosystem, the Commission intends to conclude that rulemaking prior to the incentive auction.

1. Discussion

175. The Commission is taking a number of actions to make available a significant amount of spectrum for unlicensed use in the post-auction television bands, the 600 MHz Band guard bands, and on channel 37, some of it on a nationwide basis. In total, it will make between 20 and 34 megahertz of spectrum newly available for unlicensed use, including for use by unlicensed broadband devices. This new spectrum for unlicensed use will be in addition to the TV white space channels that will exist after the incentive auction. These actions will help to create certainty for the unlicensed industry, thereby promoting greater innovation in new devices and services, including increased access for broadband services across the country.

2. Television Bands

176. The Commission anticipates that there will be at least one channel in the UHF band in all areas that is not assigned to a television station in the repacking process. As is the case today, these white space channels will be necessary to avoid interference between primary broadcast stations in the final channel assignment process. Although it also anticipates that there will be fewer unused television channels in the repacked television bands, the Commission believes that at least one of them should be available for shared use by wireless microphones and unlicensed devices. The Commission therefore intends, after additional notice and an opportunity for comment, to designate one television channel in each area for such shared use. It also agrees with commenters who argued that television channels that remain unused by broadcast television stations after the incentive auction should not be designated exclusively for wireless microphones, and instead should also be made available for potential use by unlicensed TVWS devices. Accordingly, in addition to the channel designated for shared use by wireless microphones and unlicensed devices, the Commission will make any other television channels unused by broadcast television stations after the incentive auction available for TVWS device use (to the extent consistent with the applicable technical rules) as well as wireless microphone use except at those specified times and locations where wireless microphone users have registered their operations for interference protection in the TV bands databases. In taking this approach, the Commission seeks to strike a balance between the interests of all users of the television bands, including secondary broadcast stations as well as TVWS devices and wireless microphones, for access to the UHF TV spectrum.

3. Guard Bands

177. The 600 MHz Band Plan includes guard bands to prevent harmful interference between licensed services outside the guard bands. Under the Spectrum Act, these bands may be no larger than technically reasonable to prevent harmful interference to licensed services. Consistent with the Spectrum Act, the 600 MHz Band Plan the Commission adopts provides for a guard band between television spectrum and 600 MHz downlinks, a guard band between 600 MHz uplinks and downlinks (a duplex gap), and guard bands between 600 MHz downlinks and channel 37, to protect licensed services from harmful interference. The Commission will not know until the conclusion of the incentive auction which specific 600 MHz Band Plan scenario it will employ, including the specific sizes of the guard bands. Depending on the amount of spectrum recovered in the auction, guard band spectrum will total at least 14 megahertz, and as much as 28 megahertz. As an example, if the Commission clears 84 megahertz of spectrum, there will be a three megahertz guard band between channel 37 and the 600 MHz Band downlink band, and an 11 megahertz duplex gap between 600 MHz Band uplink and

downlink bands (a total of 14 megahertz). If the Commission clears 126 megahertz of spectrum, there will be two three megahertz guard bands adjacent to channel 37, an 11 megahertz duplex gap, and a nine megahertz guard band between the 600 MHz Band downlink band and television licensees (a total of 26 megahertz).

178. Permitting unlicensed operations in the 600 MHz Band guard bands will make additional spectrum available for unlicensed devices nationwide. The record provides significant support for this action. Unlicensed devices complement licensed services and serve a wide range of consumer needs. Commenters have suggested that an 11 MHz guard band, which the Commission is adopting for the duplex gap (and the lower guard band under at least one clearing scenario), would be usable for broadband unlicensed devices.

179. While the Commission's part 15 rules for unlicensed use provide an appropriate and reliable framework for permitting low power uses on an unlicensed basis, a further record is necessary to establish the technical standards to govern such use. The appropriate assumptions for the technical analyses will be considered in the forthcoming 600 MHz and TVWS part 15 proceeding. Consistent with the Spectrum Act, unlicensed use of the guard bands will be subject to the Commission's ultimate determination that such use will not cause harmful interference to licensed services. At this juncture, the Commission is confident that unlicensed devices can operate in the duplex gap under existing TVWS rules without causing such interference. The Commission tentatively concludes that devices operating at a level of 40 mW and having a bandwidth of six megahertz will be viable in this spectrum. It intend to adopt technical rules governing unlicensed use of the 600 MHz Band guard bands in the 600 MHz and TVWS part 15 proceeding prior to the incentive auction to address concerns about the potential impact on auction bids.

4. Channel 37

180. The Commission also will permit unlicensed operations in channel 37, subject to the development of the appropriate technical parameters for such operations as part of our 600 MHz and TVWS Part 15 Proceeding in order to protect the WMTS and RAS from harmful interference. Unlicensed operations on channel 37 will be authorized in locations that are sufficiently removed from WMTS users and RAS sites to protect those incumbent users from harmful interference.

181. The Commission recognizes the importance of WMTS to patient care, and will remain mindful of this critical function when developing these technical parameters. It also recognizes the concerns of WMTS equipment manufacturers and users about the potential for unlicensed operations on channel 37 to cause harmful interference to the WMTS. Parties disagree on the appropriate interference analysis methodology (*e.g.,* I/N ratio and signal attenuation factors) as well as the ability of the TV bands databases to provide adequate protection to the WMTS. The Commission will consider these issues as part of our 600 MHz and TVWS Part 15 Proceeding, with the objective of developing reliable technical requirements that will permit unlicensed operations, while protecting the WMTS and RAS from harmful interference.

182. Subject to the adoption of appropriate technical rules, authorizing the use of channel 37 for unlicensed operations will make additional spectrum available for unlicensed devices on a nationwide basis, thereby advancing our goal of promoting innovation in new unlicensed devices. This will make an additional six megahertz of spectrum available for unlicensed devices in areas of the country that are not in close proximity to hospitals or other medical facilities that use WMTS equipment, or to RAS sites. It is appropriate to revisit the Commission's previous decision to prohibit unlicensed operation on channel 37. The repurposing of spectrum for wireless services will reduce the number of channels available for TVWS use, and channel 37 could provide additional spectrum for such use in those areas where it is not used for the WMTS and RAS. Channel 37 spectrum could be combined with guard bands on one or both sides of channel 37, if the amount of recovered spectrum requires the use of such guard bands, to provide a larger band for unlicensed use. Also, since the time the Commission made its decision to prohibit unlicensed use of channel 37, it has designated multiple TV bands database administrators, has had extensive experience working with their databases, and has a high degree of confidence that they can reliably protect fixed operations. The fixed locations where the WMTS is used are already registered in the American Society for Healthcare Engineering (ASHE) of the American Hospital Association database, and this data could be added to the TV bands databases. WMTS operations could be protected by establishing minimum distance separations as is done to protect other fixed operations, such as TV stations, wireless microphones and receive sites. The TV bands databases should be capable of handling the large number of registered WMTS sites easily, and this data can be updated on a frequent basis to ensure that new and changed WMTS registrations are quickly reflected in the TV bands databases. If spectrum adjacent to channel 37 continues to be allocated for and used by broadcast television services, this approach would also benefit TVWS equipment manufacturers and users by allowing the Commission to consider as part of the 600 MHz and TVWS Part 15 Proceeding modification of the out-of-band emission limits on channels 36 through 38 that were designed to protect the WMTS. TVWS equipment manufacturers have had to avoid operation on channels 35 and 39 to comply with the limits.

183. With regard to the RAS, there are a limited number of sites to protect, and their locations could be included in a database in the same manner as the sites of other protected services, such as the Offshore Radiotelephone Service, the Private Land Mobile Radio Service and Commercial Mobile Radio Service (''PLMRS/CMRS''), and certain other receive-only sites. The Commission intends to explore in the 600 MHz and TVWS Part 15 Proceeding whether it would be appropriate to adopt rules to prohibit operation of unlicensed devices within a certain distance from the sites and require unlicensed device operators to access the database to determine whether channel 37 is available for their use at a given location. In addition, the Commission intends to seek comment on whether to adopt any other technical requirements necessary to protect the RAS, such as power and antenna height limits.

D. Other Services

1. Channel 37 Services

184. Channel 37 (608–614 MHz) is allocated for both RAS and Land Mobile Service (the latter being limited to WMTS). The Commission declines to relocate WMTS stations or RAS observatories from channel 37 and concludes that it cannot do so in accordance with the provisions of the Spectrum Act. The Commission's 600 MHz Band Plan includes three megahertz guard bands between channel 37 and any adjacent wireless broadband services. The Commission will establish coordination zones around existing RAS facilities so that any such wireless

broadband services can be deployed to cover the broadest area possible with minimal impact to RAS observatories.

a. Statutory Limit on Relocation Costs

185. The Commission has concluded that the Spectrum Act limits its authority to relocate incumbent RAS and WMTS users from channel 37 because the total costs of relocating all such users would exceed $300 million. The Spectrum Act directs the FCC to ''evaluate the broadcast television spectrum'' and to ''make such reassignments of television channels as the Commission considers appropriate.'' The Spectrum Act also provides the Commission with authority to ''implement and enforce'' this provision of that Act ''as if . . . a part of the Communications Act.'' However, § 6403(b)(4) of the Spectrum Act, which is entitled ''[p]ayment of relocation costs,'' restricts that discretion in certain respects. Section 6403(b)(4)(A)(iii) requires the Commission to reimburse, from the TV Broadcaster Relocation Fund, the costs reasonably incurred by ''a channel 37 incumbent user, in order to relocate to other suitable spectrum,'' provided that ''all such users can be relocated,'' and that ''the total relocation costs of such users do not exceed $300,000,000.'' The Commission interprets ''such users'' to refer to all channel 37 users; that is, all RAS and WMTS incumbents. The Commission thus concludes that § 6403(b)(4) prohibits the Commission from relocating any channel 37 incumbent user, unless the Commission can move all of the channel 37 incumbents (i.e., all of the RAS and WMTS incumbents) to suitable spectrum for $300 million or less.

186. Examination of the record reflects that the cost of relocating all of the RAS and WMTS incumbents from channel 37 would far exceed $300 million. NSF estimates that relocation costs for RAS would likely not exceed $1 million per site to design, build, and implement new receivers and feed horns or no more than $13 million total. As of January 13, 2014, there were more than 121,000 registered WMTS devices in use at more than 2,300 locations. Furthermore, most WMTS devices that operate on channel 37 are designed to operate only within that spectrum and cannot simply be retuned. Thus, relocation to different spectrum would require redesign and replacement of the equipment. The record reflects that the replacement costs of WMTS devices, on average, are between $6,000 and $10,000 each. The WMTS Coalition states that a conservative estimate of relocation costs, without factoring in additional costs such as for engineering and installation, would be almost $2 billion. The consensus among commenters is that WMTS operations would be too costly to relocate: No commenter has provided any estimate that places costs within the $300,000,000 statutory limit. Considering the number of registered devices and the average cost estimates provided for equipment replacement alone, the cost of WMTS relocation could easily approach one billion dollars or more. The Commission therefore concludes that WMTS cannot be relocated within the constraints specified in the statute. Because the statute requires that both RAS and WMTS be relocated from channel 37, and because the estimated costs of relocating WMTS far exceeds the statutory limit, the Commission concludes that none of the channel 37 incumbents will be relocated and both WMTS and RAS will continue to operate on channel 37 following the incentive auction.

b. Interference Protections for Incumbent Services

187. The introduction of wireless broadband operations on adjacent channels could be problematic for RAS and WMTS on channel 37 unless appropriate mitigation measures are taken. RAS is a receive-only service that uses highly sensitive receivers to examine and study radio waves of cosmic origin. There are twelve RAS telescopes that have been using channel 37 or plan to use channel 37 in the near future. Of these, ten comprise the National Radio Astronomy Observatory's (''NRAO's'') Very Long Baseline Array (''VLBA''), which are distributed in several locations in the United States and its territories. The remaining two telescopes are characterized as single dish instruments. The Commission protects RAS from in-band harmful interference by imposing field strength limits on WMTS and requiring coordination of WMTS use within certain distances of RAS observatories. In addition, TVWS devices are prohibited from operating on channel 37 and on any other channel within 2.4 kilometers of protected radio observatories.

188. WMTS is used for remote monitoring of patients' vital signs and other important health parameters (*e.g.,* pulse and respiration rates) inside medical facilities. Health care institutions are required to register their locations and coordinate their spectrum use through the ASHE, the designated frequency coordinator, prior to commencing operation. This process minimizes the potential of WMTS users from causing interference to, and receiving interference from other WMTS devices.

189. The Commission adopted certain interference protection measures. Under the 600 MHz Band Plan it adopted, operations adjacent to channel 37 will remain as television or be limited to wireless downlink, or both, depending on the incentive auction outcome. Limiting new wireless operations to downlink adjacent to channel 37 eliminates the possibility of mobile devices, which can operate anywhere, transmitting on nearby frequencies in close proximity to RAS and WMTS installations. This in turn reduces the potential of interference from mobile devices to the incumbent services.

190. The 600 MHz Band Plan also incorporates guard bands to prevent harmful interference between 600 MHz broadband wireless service and the licensed services on channel 37 which is supported by examination of the record. Wireless broadband base stations operate at higher power than mobile devices and pose a harmful interference risk if operated adjacent to channel 37 in locations near WMTS sites. A three megahertz guard band on either side of channel 37 is technically reasonable to provide protection from OOBE and overload interference to WMTS from adjacent wireless broadband services. This guard band will ensure that OOBE from nearby wireless base stations do not significantly raise the noise floor in channel 37, which otherwise could impact a receiver's ability to reliably detect and demodulate desired signals. In addition, this guard band will prevent harmful interference caused by overload in the adjacent channels. Such interference could force active components in WMTS receivers into compression resulting in desensitization. The analysis in the Technical Appendix of the Report and Order corroborates our conclusion.

191. If the auction clears less than 84 megahertz of spectrum, the spectral environment around channel 37 will remain the same, with channels 36 and 38 available for television operations. Consistent with current rules, which do not provide any specific protections for channel 37 incumbents beyond the digital television (DTV) out-of-band emission (OOBE) limits, the Commission will not implement guard bands between channel 37 and adjacent television operations in that case. The WMTS community argues that an increased number of television stations could be assigned to channels 36 and 38 in the repacking process, and that

WMTS operations located near a DTV transmitting antenna will experience a reduction in useable spectrum of more than 20 percent, effectively reducing system capacity for WMTS operations. The need to relocate stations to channels 36 or 38 will depend on the results of the auction. If stations are relocated to these channels, the extent of any potential interference to WMTS will depend in large part on the locations of the stations. Under certain scenarios channels 36 or 38 would not be used at all for television service. Some stations currently operating on channels 36 or 38 may choose to participate in the auction or be reassigned to other channels in the repacking process, making channel 37 more usable for WMTS in some locations. While the Commission is sensitive to the desire to minimize any detrimental impact on WMTS, under the current circumstances, WMTS will not receive enhanced protection if additional stations are added to channels 36 or 38 as a result of the repacking process.

192. RAS poses different interference concerns than WMTS. The Commission's current rules do not specify protection levels for radio astronomy sites. The RAS has been able to function successfully on channel 37 due to the relatively stable spectral environment associated with television operations on adjacent channels and the flexibility the Commission has had in locating television stations far away (both geographically and spectrally) from RAS locations. Because of the extreme sensitivity of the RAS receivers, wireless operations near channel 37 could cause harmful interference following the auction. However, a collateral benefit of our decision to establish guard bands to prevent harmful interference to WMTS from adjacent wireless operations also provides protection to RAS. In other words, because the guard bands for WMTS provide frequency separation from wireless services, the physical separation necessary for wireless services to protect RAS from harmful interference decreases significantly.

193. Recognizing the value of providing as much flexibility as possible to new 600 MHz Band licensees, the Commission is not adopting any specific constraints on wireless fixed and base station locations operating in the 600 MHz downlink band, but instead will require any new 600 MHz licensee to coordinate with National Science Foundation (NSF) prior to commencing operations at permanent fixed locations near RAS observatories. Requiring coordination will provide the necessary certainty to RAS observatories that their sites will be protected. Specifically, the Commission will require such coordination for stations within 25 kilometers of a VLBA installation. Staff analysis to support these separation distances is detailed in the Technical Appendix of the Report and Order. Because the RAS observatories are generally located in remote locations, the Commission does not expect dense wireless deployment near those sites. Thus, this requirement does not present a significant burden to 600 MHz wireless licensees' network because the number of necessary coordination is expected to be minimal. In addition, many observatories are also protected by terrain features (e.g., nearby mountains) that block wireless signals, making coordination, in most cases, a simpler process.

194. The Commission notes that the only two single dish radio astronomy installations that operate in channel 37 are the Green Bank, WV and Arecibo, PR observatories. The Commission's rules already require specific procedures for wireless operations near those locations. The Commission also notes that in many cases, geographic features that protect RAS sites will block wireless system signals. Consistent with § 1.924, the Commission will require wireless licensees to provide the following information: Identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), type of emission, and effective isotropic radiated power. The Commission strongly encourages the parties to cooperate so as not to unreasonably frustrate the operations of RAS or wireless operations.

2. Television Fixed Broadcast Auxiliary Stations

195. As discussed above, we will continue to license fixed BAS on a secondary basis in the television bands following the incentive auction. As a result of the incentive auction and repacking process, however, BAS operators will be required to vacate the 600 MHz Band no later than the end of the Post-Auction Transition Period. Following the issuance of the *Channel Reassignment Public Notice* (''*Channel Reassignment PN*''), BAS operations will have significant advance notice of the channels they may need to vacate, which will assist them in advance planning for that process.

196. *Notification Procedures for Operations in the 600 MHz Band and the Post-Auction Television Bands.* We agree with CTIA that requiring BAS to discontinue operations and/or relocate is necessary to produce fully available spectrum to meet the growing demand for wireless services. Therefore, while we will continue to license fixed BAS on a secondary basis in the UHF spectrum that remains allocated and assigned to full power television services nationwide, we will require all fixed BAS stations to cease operating and relocate from the 600 MHz Band no later than the end of the Post-Auction Transition Period (i.e., 39 months after issuance of the *Channel Reassignment PN*). Additionally, before the end of this transition period, if a new 600 MHz licensee intends to commence operations, the 600 MHz licensee must provide 30 days' advance notice to the BAS operator that it intends to commence operations and that the BAS station is likely to cause harmful interference to those operations. The BAS operator must cease operating on that channel within 30 days of receiving notice. The few commenters addressing fixed BAS relocation issues are generally supportive of this notification approach. The notice from the 600 MHz licensee to the BAS licensee must take the form of a letter, by certified mail, return receipt requested. A 30-day notice period will serve the public interest by both protecting BAS operations and speeding the deployment of new broadband wireless services.

197. In addition, as a secondary service, BAS may not cause interference to repacked television stations. Should a repacked broadcast television licensee in the 600 MHz Band or the repacked UHF Band experience harmful interference from a BAS licensee, the BAS licensee must, pursuant to the Commission's rules, immediately cease operations and may not resume operations until the interference problem is resolved.

198. *Operations in the Guard Bands.* We also will require that BAS operations on channels that include frequencies that will be reserved for guard bands pursuant to this Order cease operations on those channels. As discussed above, the 600 MHz Band includes guard bands (including the duplex gap), and consistent with the Commission's proposal in the NPRM, we will permit only low power operations in those bands. We will establish specific rules for low power operations in the guard bands in the 600 MHz and TVWS Part 15 Proceeding. All BAS operations in spectrum reserved for guard bands will be required to cease operating on that spectrum no later than the end of the Post-Auction Transition

Period (i.e., 39 months after the issuance of the *Channel Reassignment PN*).

3. Low Power Auxiliary Stations (LPAS) and Unlicensed Wireless Microphones

199. Low power auxiliary station (''LPAS'') operations, which are currently authorized only for broadcast and certain related entities, are intended for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals (referenced collectively as ''wireless microphones''). The Commission's rules provide for licensed LPAS operations on unused television channels on a secondary, non-exclusive basis. The Commission also currently permits certain unlicensed operations of wireless microphones (including related devices) in the television bands pursuant to a limited waiver of Part 15 rules.

200. The Commission discussed wireless microphone operations in the television bands, where it provide additional opportunities for access to available channels following the incentive auction, and in the 600 MHz Band guard bands, where it will permit microphone users to operate, subject to the forthcoming rules for low power operations in those bands. In addition, as discussed, during the post-auction transition period the Commission will allow wireless microphone users to continue to operate in the repurposed spectrum pursuant to certain conditions. The Commission also will be initiating a proceeding in the next few months to address the needs of wireless microphone users over the longer term, both through revisions to our rules concerning use of the television bands and through promotion of opportunities using spectrum outside of the television bands.

a. Operations in the Post-Auction Television Bands

201. Under current rules, the television channels available for wireless microphones include two unused channels (when available) in the UHF band near channel 37, where unlicensed TVWS device operations currently are prohibited, as well as any other channels available at locations that are separated from television stations by specified separation distances. The number of these other channels varies depending on location, and often may include channels that also can be used by unlicensed TVWS devices. Licensed LPAS operators may obtain protection from interference from TVWS devices on those channels by reserving them at specified locations and times of operation in the TV bands databases. In addition, certain qualifying unlicensed wireless microphone operators also can obtain interference protection from TVWS devices at specified times by registering with the Commission, enabling them to have their operations included within the TV bands databases.

202. The Commission takes several steps in this proceeding to ensure that the reduced amount of television spectrum that remains following the incentive auction can continue to accommodate wireless microphone operations, along with other uses of this spectrum, in an efficient and effective manner. First, the Commission revised its rules for co-channel operations to expand the areas where wireless microphones may be used in the television bands. Second, although there may no longer be two unused television channels available for wireless microphones following the incentive auction, the Commission intends to designate one television channel that is not assigned to a television station in the repacking process for use by both wireless microphones and unlicensed TVWS devices. In addition, the Commission will propose further steps in the near term in the 600 MHz and TVWS Part 15 Proceeding to make improvements to the registration system in the TV bands databases. These steps will provide licensed LPAS operators a more timely and effective means to obtain needed protection from unlicensed TVWS device operations on any of the available television channels. On balance, the Commission concludes that the changes it is making best serve to address the important needs of wireless microphone users as well as other users that seek access to the broadcast spectrum that remains available for use following repacking.

203. *Co-channel Operations.* To ensure that wireless microphones users have access to as many television channels as possible following the repacking process, the Commission revised its rules for co-channel operations in two ways. These revisions will provide wireless microphones with access to additional television channels in particular locations without raising interference concerns to television licensees. Such additional access may be particularly important in those locations where most television channels are occupied by broadcasters and wireless microphone users seek access to several channels.

204. First, the Commission reduced the current co-channel separation distances applicable to wireless microphone operations in the television bands. The current rule, which was adopted prior to the transition to digital television, was designed to protect analog television reception and, therefore, is outdated. Further, the distances the rule specifies in many cases may be greater than necessary to protect against interference because it does not account for variations in power or antenna height that reduce the size of some stations' service areas. The Commission revised the rule to permit wireless microphones to operate at distances as close as four kilometers from a television station's predicted service contour (including digital or analog full power, Class A, and LPTV stations).

205. The Commission's action aligns the separation distance rules for wireless microphones with those for unlicensed personal/portable TVWS devices, which operate at similar power levels. Personal/portable TVWS devices are permitted to operate with a maximum power of 100 milliwatts and must operate at least four kilometers outside the protected service contour of co-channel television stations (digital or analog), a distance based on a power level of four watts (4,000 milliwatts). Most wireless microphones typically operate at power levels of less than 50 milliwatts. For analog wireless microphones, even if there were as many as 16 operating simultaneously in a six megahertz TV channel, more than the typical six to eight microphone range for most existing technologies, the total transmitted power within a six megahertz channel will not exceed 800 milliwatts, five times less than the power on which the four kilometer separation distance required for personal/portable TVWS devices is based. Even were sixteen wireless microphones on a six megahertz channel to operate at up to 250 milliwatts, as permitted for licensed LPAS operators, the total transmitted power still would not exceed four watts (4,000 milliwatts). The Commission concludes that based on its technical analysis that a four kilometer separation distance between wireless microphones and a television station's protected service contour will protect television reception from interference.

206. Second, to enable licensed LPAS operators to access additional co-channel spectrum, the Commission also will permit licensees to operate even closer to television stations than the revised separation distances, provided that any such operations are coordinated with the television licensees. Based on the record before us, the Commission concludes that the best approach is to permit licensed LPAS users, including newly eligible

licensees, to obtain access to additional television channels at a given location through the coordination process. Requiring coordination with broadcasters effectively addresses the concerns of those commenters, including NAB, that oppose or express concern about revising the rules to provide for closer co-channel operations, based on the potential for interference to television operations. The Commission notes that many of the licensed LPAS operators, including both broadcasters and many users that would now be eligible for licenses, already coordinate with each other to share spectrum.

207. *Designating Channels for Wireless Microphones.* The Commission anticipates that there will be at least one television channel in all areas of the United States that is not assigned to a television station in the repacking process. As is the case today, such ''white space'' channels will be necessary to avoid interference between primary broadcast stations in the final channel assignment process. Although the Commission anticipates that there will be fewer such unused television channels in the repacked television bands, it intends, after additional notice and an opportunity for comment, to designate one of these television channels in each area for shared use by wireless microphone and unlicensed devices. Accordingly, in addition to the channel designated for shared wireless microphone and unlicensed TVWS device use, the Commission will make any other unused television channels following the incentive auction available for shared wireless microphone and TVWS device use (to the extent consistent with the applicable technical rules), except at those specified times and locations where wireless microphone users have registered their operations for interference protection in the TV bands databases.

208. The Commission will not continue to designate any television channels unused by television stations exclusively for the use of wireless microphones. The steps taken concerning wireless microphone operations in the repacked television bands, taken together with other steps to accommodate wireless microphone uses, represent a balanced approach to addressing the needs of wireless microphone users and the other users that seek access to the more limited television spectrum that is likely to remain available for use following the incentive auction.

209. Given the Commission's decision to no longer designate two unused television channels, where available, exclusively for wireless microphones, it plans to take steps to improve the operation of the TV bands databases to enable licensed LPAS operations to obtain more immediate protection from interference from TVWS devices on any available television channels at the times and locations that these wireless microphone users need. The Commission plans to address how best to make these improvements in the 600 MHz and TVWS Part 15 Proceeding.

b. Operations in the Guard Bands

210. The Commission will allow unlicensed devices to operate in the guard bands, including the duplex gap. To make additional spectrum outside of the repacked television bands available for wireless microphone uses, it also will permit wireless microphone devices to operate in the 600 MHz Band guard bands on an unlicensed, unprotected basis provided that they comply with the technical requirements the Commission will adopt for low power device operations in these guard bands in the 600 MHz and TVWS Part 15 Proceeding.

211. In addition to permitting unlicensed wireless microphone operations in the guard bands, the Commission will permit certain wireless microphones operations in a portion of the duplex gap on a licensed basis. Broadcasters and cable programming networks contend that without the continued availability of unused television channels for interference-free wireless microphone operations, they will have difficulty providing certain programming, including emergency information, on which their ability to provide vital information to first responders and the public depends. Without access to some guard band spectrum for this purpose, there may be areas in the country where there would be little if any certain access to UHF band spectrum for wireless microphone operations on a protected basis. Accordingly, the Commission concludes that the public interest will be served by allowing broadcasters and cable programming networks using wireless microphones on a licensed basis in a portion of the duplex gap to obtain interference protection from unlicensed devices at specified times and locations, on an as-needed basis. In the 600 MHz and TVWS Part 15 Proceeding, the Commission will examine how best to provide access to a portion of the duplex gap by licensed wireless microphone users, while also ensuring that unlicensed users of the duplex gap can make use of this spectrum to provide broadband services. The Commission anticipates that the duplex gap would be partitioned such that six megahertz would be available for unlicensed broadband devices to operate under the existing TVWS rules for 40 mW personal/portable devices, and four megahertz adjacent to the 600 MHz Band downlinks would be available for licensed wireless microphone operations.

212. In taking this approach in the guard bands, the Commission seeks to promote unlicensed operations generally while also providing access to spectrum for wireless microphone uses, consistent with the requirement that operations in the guard bands do not cause interference to, and serve to prevent interference to licensed services outside of the guard bands.

E. Allocations

213. The Commission adopts fixed and mobile allocations to the Table of Allocations on a co-primary basis with broadcast television. Specifically, it will add fixed and mobile services to the Table of Allocations for UHF channels 21–36 (512–608 MHz) and 38–51 (614–698 MHz), but not for UHF channels 14–20 (470–512 MHz) (also known as the ''T-Band'') or for VHF channels 2–13 (54–72, 76–88, and 174–216 MHz). The Commission concludes that its action addresses the practical requirements of the incentive auction and the concerns raised by broadcasters and other parties. The Commission retains the allocations for Channel 37 for the RAS and the Land Mobile Service for WMTS.

214. Adding fixed and mobile services to the Table of Allocations for UHF channels 21–36 and 38–51 is necessary to address the practical requirements of the incentive auction and the UHF band transition that follows it. The assignment, licensing and use of frequencies must be in accordance with the Table, yet the Commission cannot know in advance of the incentive auction which frequencies will be repurposed for new uses in which geographic areas because that depends on the outcome of the incentive auction. Further, by adding fixed and mobile services to the Table of Allocations for all of the frequencies that could be repurposed prior to the incentive auction, it will assure forward auction bidders that the frequencies on which they bid will be available for new, flexible uses without the need to conduct additional allocation proceedings post-auction that could risk delaying the transition and the introduction of new services. In addition, following the incentive auction, co-primary fixed/mobile/broadcasting allocations will allow

users that currently operate on such frequencies on either a primary or secondary basis—including full power, Class A and LPTV stations, TV translator stations, BAS stations, and LPAS—to continue operating for an interim period on frequencies that will be repurposed during the course of the UHF band transition, as well as to allow LPTV and TV translator stations to continue to operate on such frequencies during the reorganization of the UHF band.

215. To clearly identify where broadcast television and mobile wireless services will be permitted, the Commission will later modify the Table of Allocations promptly to reflect the outcome of the incentive auction. Specifically, the Commission hereby delegate authority to the Chief of the Office of Engineering and Technology to take such actions as are necessary to modify the Table of Allocations to be consistent with the outcome of the incentive auction—*e.g.,* to remove the co-primary fixed and mobile allocations from segments of the UHF band that will remain available only for television broadcast service on a nationwide basis. Our foregoing delegation to OET also includes authority to modify the Table to add a footnote indicating that fixed and mobile services are authorized only in band segments and in geographic areas specified in Part 27.

III. The Incentive Auction Process

216. Consistent with the Commission's practice in past spectrum license auctions, we adopt rules in the Order that will allow subsequent determination of specific final auction procedures. Following the Order, a pre-auction process will precede the bidding process for the incentive auction. This pre-auction process will determine both the specific final auction procedures, based on additional public input, and the auction participants, through an application process. The process will be initiated by the release of the *Comment PN,* which will solicit public input on final incentive auction procedures, and which will include specific proposals for crucial auction components such as opening prices. Thereafter, the *Procedures PN* will specify final procedures, including dates, deadlines, and other final details of the application and bidding processes. The rules we adopt in the Order provide for the ability to refine aspects of the reverse and forward auctions if the record developed in response to the *Comment PN* during the pre-auction process reflects the need to do so. The Wireless Bureau has delegated authority with respect to the administration of spectrum license auctions, including both the reverse auction component of incentive auctions under the new Part 1 rules adopted in the Order and the forward auction component of incentive auctions pursuant to the Part 1 rules as modified by the Order.

217. The Commission's practice of finalizing auction procedures in the pre-auction process provides adequate time for participants to both comment on the final procedures and to develop business plans in advance of the auction. This approach has worked well, and a similar one is all the more necessary for the incentive auction due to its novelty and complexity. Maintaining flexibility in the implementation of final procedures is a prudent approach to assuring that the incentive auction will take place in a timely manner and fulfill the goals we have established by the Order.

A. Overview and Integration of the Reverse and Forward Auctions

218. The incentive auction will consist of a reverse and a forward auction. The reverse auction portion of the broadcast television spectrum incentive auction will collect information about the price at which broadcast television licensees would be willing to voluntarily relinquish some or all of their spectrum usage rights. The forward auction portion of the incentive auction will identify the prices that potential users of repurposed broadcast television spectrum would pay for new licenses to use the spectrum. This information, together with information from the reverse auction and subject to meeting the requirements for repurposing spectrum through the incentive auction, will determine the winning bidders for new flexible use licenses and the prices those bidders will pay for the spectrum licenses.

219. The reverse and forward auctions will be integrated in a series of stages. Each stage will consist of a reverse auction and a forward auction bidding process, and stages will be run until it becomes clear that the overall proceeds requirements for the incentive auction can be satisfied. Prior to the first stage, the initial spectrum clearing target will be determined. Then the first stage of the reverse auction will be run to determine the total amount of incentive payments to broadcasters required to meet that spectrum target. The first stage of the forward auction bidding process will follow the reverse auction bidding process for the first stage. If the proceeds of the forward auction are sufficient to satisfy the final stage rule during the first stage, the forward auction bidding process will continue until there is no excess demand for licenses, and then the incentive auction will close. If the rule is not satisfied, however, a second stage of the incentive auction will be run with a smaller spectrum clearing target in the reverse auction and fewer spectrum licenses available in the forward auction. If the final stage rule again is not met during the second stage, additional stages will be run, with progressively smaller spectrum clearing targets in the reverse auction and fewer licenses available in the forward auction, until the requirements of the rule are satisfied.

220. Here, we address how the reverse and forward auction bidding processes will be integrated through the spectrum clearing target, the stage structure, and the final stage rule. As with other components of the incentive auction, we adopt rules here to enable us to implement these components, and will establish final, specific procedures based on more public input during the pre-auction process.

1. Initial Spectrum Clearing Target

221. The initial clearing target—the maximum amount of spectrum sought to be cleared of television stations and repurposed through the incentive auction—will be determined before commencement of the reverse and forward auction bidding processes. In this ''initialization step,'' each participating broadcaster will indicate its willingness to accept the opening price for various bid options. A bidder that accepts a price for a relinquishment option, whether the opening price or any other price offer in the reverse auction, makes a binding commitment to accept the relinquishment option if the auction system selects that bid as a winning bid. The opening price will be the highest price offer that the broadcaster could receive for a bidding option. The initial clearing target will correspond to one of the spectrum recovery scenarios in our 600 MHz Band Plan. The initial clearing target will be as high as possible given the number of broadcasters participating in the reverse auction and their willingness to bid at their opening prices, considering the parameters established for the repacking process and the amount of market variation to be accommodated.

222. Consistent with our goal of allowing market forces to determine the highest and best use of spectrum, we choose to determine the initial clearing target based on information provided to the Commission by broadcast television licensees in the initialization step.

223. Broadcast television licensees' responses to opening prices will

determine which licensees participate in the reverse auction for which bid options. A licensee entitled to protection in the repacking process that does not file an application to participate in the reverse auction, as well as any applicant declining to accept an opening price for any option—that is, declining to participate in the reverse auction—will be designated for assignment of a television channel in its pre-auction or home band. Thus, at the conclusion of the initialization step, the Commission will know, at a minimum, which television stations need to be assigned channels in their home bands in the repacking process, and can set the initial spectrum clearing target accordingly. The Commission will use optimization techniques to determine the amount of spectrum that can be cleared or repurposed based on the feasibility of assigning channels to non-participating stations that are entitled to protection in the repacking process, as well as to participating stations that are willing only to move to a lower band.

2. Stage Structure

224. In the Order we conclude that the incentive auction will be conducted in a series of stages. Each stage will be associated with a spectrum clearing target for bidding in the reverse auction and a corresponding license inventory for bidding in the forward auction. The clearing target and license inventory will be reduced from stage to stage, if the final stage rule is not satisfied. We adopt this structure in large part to facilitate bidder participation. Unlike alternatives in which the reverse auction bidding process would be run for all possible clearing targets before the forward auction bidding process, or vice versa, the stage structure does not require bidders in either side of the auction to provide more bid information than is needed for the auction to close. Further, bidders in each side of the auction will receive some information about conditions on the other side, facilitating their bidding decisions. In addition, stopping the incentive auction at the earliest stage in which the final stage rule is met avoids prolonging the bidding processes unnecessarily, consistent with our recognition that speed is important to a successful auction outcome. The stage structure also provides a workable framework for determining the greatest amount of spectrum that can be cleared while satisfying the final stage rule. Because the reverse and forward auction bidding processes will be conducted for a common benchmark amount of cleared spectrum in each stage, the auction mechanism will be able to compare the incentive payments required to clear a given amount of spectrum to the forward auction proceeds available to pay for such clearing.

225. Commenters agree that the stage structure we adopt will facilitate and encourage auction participation by broadcast television licensees. They note the informational advantages of a staged approach, including the importance of price discovery to participants. We disagree with one commenter that running the reverse auction in full for all clearing targets (a ''single-pass'') before the forward auction commences would simplify participation for reverse auction bidders. On the contrary, the single-pass proposal would deprive broadcast television licensees of any information about the forward auction and require them to reveal more information than necessary during the reverse auction bidding. Nor are we persuaded that the need to conduct forward auction bidding between the reverse auction bidding process in each stage would impose a significant burden on participating broadcasters, particularly given that the stage structure might avoid the need for multiple stages, thereby concluding the entire auction more quickly.

226. Some wireless carriers contend that the single-pass approach would provide the greatest level of certainty for forward auction participants, thereby enhancing participation in the forward auction. We recognize that wireless carriers need time for planning and information regarding auction inventories in order to assess auction strategies and obtain financing. We note, however, that uncertainty about the number of spectrum licenses that will be available is inherent in the incentive auction, and affects parties on both sides of the auction process. In that regard, the 600 MHz Band Plan is designed to provide potential forward auction participants with as much information as possible prior to the incentive auction so that they may prepare for the various contingencies that may unfold during the bidding. With respect to specific concerns about time available to prepare for the auction, we further note that we will establish the specific timing, including the lag, if any, between auction stages and between the reverse and forward auction bidding processes within a stage, in the pre-auction process. We conclude that the stage structure, which shares information about supply and demand with forward and reverse auction participants at the same time, is the optimal integration method for this incentive auction because it will facilitate broadcaster participation and serve as an effective means of determining whether the final stage rule can be satisfied at various spectrum clearing target levels.

227. Once the initial spectrum clearing target is determined, establishing the initial target for the first stage of the incentive auction, the reverse auction bidding process will begin. In that process, reverse auction bidders will be asked, in a series of bidding rounds, whether they are willing to accept progressively lower prices for the bid options. This bidding process will determine the total amount of the incentive payments that broadcast television licensees will require in order to voluntarily relinquish spectrum usage rights that will permit clearing of enough television channels to meet the initial clearing target. Generally, the prices for a bid option will descend from round to round until a station's voluntary relinquishment of rights becomes necessary to meet the spectrum clearing target.

228. Although each stage generally will be associated with a single clearing target, during the first stage of the auction the target may be reduced or modified in certain areas if we implement a ''dynamic reserve price,'' under which bidders would be asked if they are willing to accept lower prices in areas without bidding competition (that is, areas where there is not active bidding by more stations than needed to meet the initial clearing target). If stations in such areas do not accept reduced prices and cannot be assigned a channel in the television bands, then they may be assigned a channel in the repurposed spectrum. Alternatively, the clearing target may have to be adjusted to make channels available for those stations. Details of the operation of any dynamic reserve price would be established in the *Procedures PN* after an opportunity for comment.

229. Once the reverse auction bidding process has ended, the amount of the incentive payments required to achieve the spectrum clearing target will be known, as will any impairments to that target, and the auction system will announce the inventory of licenses available for bidding in the forward auction. Then the forward auction bidding process will be conducted to determine how much bidders are willing to pay for the inventory of licenses corresponding to the initial clearing target. The final stage rule for the incentive auction will be continuously evaluated during the forward auction bidding process. If the final stage rule is satisfied, then the

incentive auction will end with the first stage. Bidding will continue in the forward auction, however, until there is no excess demand for licenses. If the final stage rule is not satisfied, the incentive auction will proceed to a second stage.

230. In a second stage, the spectrum clearing target in the reverse auction would be smaller than in the first stage. Likewise, the license inventory in the forward auction would be smaller than in the first stage. Reducing the spectrum clearing target will increase the likelihood of satisfying the final stage rule because less spectrum will need to be cleared and, therefore, fewer broadcasters will require incentive payments and prices in the reverse auction will generally fall. If the final stage rule is not satisfied in the second stage, then additional stages would be run with smaller clearing targets in the reverse auction and license inventories in the forward auction, until the final stage rule is satisfied.

3. Final Stage Rule

231. The earliest auction stage that meets the ''final stage rule'' will be the final stage of the auction. The final stage rule is a reserve price with two components. The current auction stage (and associated clearing target) will be designated as the ''final stage'' if the requirements of both components are met. In the pre-auction process, we will consider whether to apply the final stage rule solely to ''major markets'' and, if so, how to identify such markets. This approach could significantly speed up the determination of whether the final stage rule is satisfied. After the final stage rule is satisfied, bidding will continue in the forward auction until there is no excess demand for licenses.

232. The first component of the rule will be satisfied by the average price per MHz-pop for licenses in the forward auction or the total proceeds associated with those licenses, depending on the amount of spectrum cleared in that stage. The term ''MHz-pop'' is defined as the product derived from multiplying the number of megahertz associated with a license by the population (''pop'' or ''pops'') of the license's service area.

233. Specifically, the first component of the reserve price will be satisfied if, for a given stage of the auction:

- The average price per MHz-pop for licenses in the forward auction meets a price benchmark that will be set by the Commission in the pre-auction process (this version of the first component will apply when the clearing target for the given stage of the auction is at or below the Commission's specified spectrum clearing benchmark),

or

- the total proceeds associated with licenses in the forward auction exceed the product of the price benchmark, the spectrum clearing benchmark, and the total number of pops for those licenses. That is, if $p is the benchmark average price per MHz-pop, and Q is the spectrum clearing benchmark, the alternative version of the first component will be satisfied if the total proceeds from the licenses are at least $p times Q times the total pops in those licenses. The alternative version of the first component will apply only when the spectrum clearing target for a given stage of the auction is above the Commission's spectrum clearing benchmark.

The price and spectrum clearing benchmarks will be established by the Commission in the *Procedures PN,* after an opportunity for additional comment.

234. The second component of the final stage rule requires that, under either of the prongs of the first component, the proceeds of the forward auction also must be sufficient to meet the clearing costs identified in the reverse auction, the other expenses set forth in section 6403(c)(2) of the Spectrum Act, and any Public Safety Trust Fund amounts still needed in connection with FirstNet after the close of the H Block and AWS–3 auctions. The Spectrum Act requires that the forward auction generate proceeds sufficient to pay winning bidders in the reverse auction and cover relevant administrative costs of the auction and an estimate of relocation costs subject to reimbursement. *See* Spectrum Act § 6403(c)(2). The Spectrum Act establishes the priority for making payments or deposits from the Public Safety Trust Fund as amounts are deposited into the Fund, including to fund FirstNet, but does not mandate additional deposits. *See* Spectrum Act § 6413(b). Section 6413(b) specifies that the first $7.135 billion of the proceeds from auctions authorized under the Spectrum Act and deposited into the Fund will be used for FirstNet-related purposes. If the requirements of both components are met, then the final stage rule is satisfied.

235. The final stage rule advances our goal of allowing market forces to determine the highest and best use of spectrum. The approach described above will allow the incentive auction to determine the best balance of spectrum cleared and spectrum license prices attained through competition, while ensuring that the auction meets the statutory requirements. The first component's alternative conditions are designed to address the unique nature of the incentive auction, in particular, the fact that we will not know how much spectrum will be available for the forward auction when establishing the price and spectrum benchmarks before the auction. This approach recognizes that if the incentive auction repurposes a relatively large amount of spectrum for flexible uses, per-unit market prices may be expected to decline consistent with the increase in available supply. The alternative formulation allows the first component to be satisfied in a stage with a high spectrum clearing target based on the total proceeds of the forward auction, even if the per-MHz-pop price is less than the benchmark price.

236. We establish the final stage rule pursuant to the underlying auction provisions in the Communications Act, which direct the Commission to establish methods for requiring a reserve price unless it determines that it is not in the public interest to do so. An objective common to all FCC auctions of spectrum licenses is that auction prices generally reflect competitive market values for comparable spectrum licenses. The reserve price approach described in the Order will serve the public interest and this goal. The first component of the final stage rule's reserve price ensures that the forward auction recovers ''a portion of the value of the public spectrum resource,'' as required by 309(j)(3)(C) of the Communications Act. Our approach based on the specific price and spectrum clearing benchmarks aims to assure that prices for licenses in the forward auction reflect competitive values without reducing the amount of spectrum repurposed for new, flexible-use licenses. We will base the benchmark average per-unit price on factors including, but not limited to, prices received in auctions of comparable spectrum licenses. The *Procedures PN* will determine the specific parameters of the final stage rule after further notice and comment in the pre-auction process.

237. The second component of the final stage rule's reserve price ensures that the forward auction recovers the clearing costs and other expenses identified by the Spectrum Act. We will assess the satisfaction of these statutory expenses in the aggregate. We also include FirstNet funding in the second component of the reserve price, consistent with section 309(j)(3)'s express command that in designing our auction rules we ''seek to promote the purposes specified in [section 1 of the Communications Act].'' Those purposes include ''promoting safety of life and

property through the use of . . . radio communications.'' *See* 47 U.S.C. § 151. Among the funding priorities identified in the Spectrum Act, including other public safety-related priorities, ensuring the build-out of FirstNet uniquely clearly furthers this purpose, as confirmed by examination of the public safety provisions of the Spectrum Act, which is part of the same overall statutory scheme. Congress specifically directed the Commission to reallocate spectrum to and license FirstNet, instructed the Commission to ''take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to [FirstNet],'' and authorized the Commission to ''take any action necessary to assist [FirstNet] in effectuating its duties and responsibilities'' under the Spectrum Act. *See* Spectrum Act §§ 6201(a), 6201(c), 6213.

238. We also note that the auctions authorized by the Spectrum Act, including incentive auctions, are the sole source of federal funding identified by Congress for FirstNet. At this time, there are no additional incentive auctions planned prior to the end of fiscal year 2022. Thus, unless FirstNet funding is part of the final stage rule for the broadcast television spectrum incentive auction, full funding of the Public Safety Trust Fund (''PSTF'') for FirstNet may be deferred indefinitely. We are optimistic that the proceeds from the H Block and AWS–3 auctions will be sufficient to fully fund amounts for FirstNet. Nonetheless, we include PSTF funding for FirstNet as part of the final stage rule to address the possibility that such amounts will not be fully funded from the proceeds of those earlier auctions, and pursuant to the explicit public safety goals set forth above. For the reasons explained above, we disagree with commenters that contend the Commission should not apply a final stage rule or conditions beyond the expenses enumerated in the Spectrum Act. We read section 6403(c)(2) of the Spectrum Act as simply requiring that the incentive auction recover the expenses specified therein, i.e., payments to the reverse auction winning bidders, the Commission's administrative expenses, and the estimated costs of relocation. We do not construe the Spectrum Act to repeal the Commission's broad authority under section 309(j)(3) to promote the public safety goals outlined in section 1 of the Communications Act, which is the basis for our inclusion of FirstNet support in the final stage rule.

239. Once the final stage rule is satisfied, and bidding has continued in the forward auction until there is no excess demand for licenses, winners of generic licenses in the forward auction will participate in an assignment round for specific frequency assignment. Final prices for forward auction licenses will be set in the assignment round. Results of the final stage of the reverse auction will determine which broadcasters will relinquish which spectrum usage rights and how much of the auction proceeds they will receive in exchange. Stations that will remain on the air will proceed to the final channel assignment process.

B. Reverse Auction

1. Pre-Auction Process

a. Eligibility

240. The Commission limits reverse auction participation to the licensees of full power and Class A television stations that the Commission will protect in the repacking process. For each station, the rights eligible for voluntary relinquishment will be the same as those associated with the facilities that the Commission will protect in the repacking process absent relinquishment of those rights.

(i) Licensees Eligible To Participate

241. The Commission will limit reverse auction participation to licensees of commercial and NCE full power and Class A stations. Limiting reverse auction eligibility in this manner comports with the plain language of the Spectrum Act as well as the policies underlying it. Section 6403(a)(1) directs the Commission to conduct ''a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights . . .'' The Spectrum Act defines ''broadcast television licensee'' as ''the licensee of (A) a full-power television station; or (B) a low-power television station that has been accorded primary status as a Class A television licensee . . .'' The Commission finds that the Act extends reverse auction eligibility to NCE licensees of full power and Class A stations. Licensees of LPTV and TV translator stations will not be eligible to participate in the reverse auction.

242. The Commission interprets ''licensee'' to mean ''the holder of a . . . station license,'' as it is defined in the Communications Act. In order for a broadcaster to be a reverse auction eligible ''licensee,'' it must hold a license for the full power or Class A station it wishes to offer at auction on or before the Pre-Auction Licensing Deadline. Thus, the small number of entities that held construction permits but not licenses for new full power television stations as of February 22, 2012 must obtain licenses for these stations on or before the Pre-Auction Licensing Deadline in order to be eligible to participate in the reverse auction.

(ii) Spectrum Usage Rights That Will Be Eligible for Relinquishment

243. The Commission will recognize for voluntary relinquishment in the reverse auction those spectrum usage rights associated with facilities entitled to repacking protection, including those that the Commission must protect under the Spectrum Act and those that the Commission will afford discretionary protection. In all but a few cases, a facility must be licensed by the Pre-Auction Licensing Deadline in order for the spectrum usage rights covered by that facility to be recognized for relinquishment. With one exception, as discussed above, the Commission will not protect LPTV stations that were eligible for a Class A license but that did not file an application for such license until after February 22, 2012. Although such entities may hold Class A licenses before the Pre-Auction Licensing Deadline, their facilities will not be protected in the repacking process, and thus the spectrum usage rights covered by such facilities will not be recognized for relinquishment.

244. The Commission interprets the term ''spectrum usage rights'' in the Spectrum Act to mean the rights of a broadcaster to use spectrum pursuant to a station's license. The Commission concludes that STAs and experimental licenses do not qualify as ''spectrum usage rights.'' Under its interpretation, spectrum usage rights may include a licensee's existing or prospective licensed rights to use spectrum. The Spectrum Act does not specify a date by which a broadcaster must secure its spectrum usage rights in order to be able to relinquish them at auction, and the Commission does not believe the statute requires that these rights be licensed by a specific date. The Commission will recognize for relinquishment, even if they are not licensed by the Pre-Auction Licensing Deadline, the facilities authorized in a construction permit to modify the existing license of: (1) A station affected by the destruction of the World Trade Center that seeks to relocate to the new 1 World Trade Center site if the station elects to protect such facility in the repacking process; and (2) the station allotted to channel 3 at Middletown Township, New Jersey pursuant to a court order. All other facilities must be licensed by the Pre-Auction Licensing Deadline for the

usage rights covered by that facility to be recognized for relinquishment. The rights eligible for relinquishment will include those reflected in permits granted by the April 5, 2013 issuance of the Media Bureau's *Freeze PN,* so long as the relevant facilities are licensed by the Pre-Auction Licensing Deadline. Class A licensees that received initial authorizations for their digital facilities prior to April 5, 2013 are subject to the *Freeze PN,* while such licensees obtaining initial digital authorizations after this date are not.

(iii) Pending Renewal and Enforcement Proceedings

245. The Commission will allow a broadcaster with a pending enforcement matter or a pending license renewal application (even if the petition to deny period has not expired) that raises an enforcement issue to participate in the reverse auction, on condition that such a broadcaster who no longer would hold any broadcast licenses upon acceptance of a license relinquishment bid agrees that a share of its reverse auction proceeds be placed by the Commission in escrow to cover potential forfeiture costs. Reverse auction bidders that hold multiple broadcast licenses and will continue to hold at least one Commission license upon acceptance of their bids will remain subject to any pending license renewal, as well as any enforcement action against the station offered at auction. Such participants will be required to acknowledge this continuing liability in their pre-auction application.

246. To implement this policy, if a broadcaster indicates in its pre-auction application that (1) it might place one or more license relinquishment bids, and (2) it would not control any other broadcast stations if its bid or bids were accepted, then the Commission will review its records to determine whether any outstanding enforcement matters exist pertaining to the broadcaster's stations, including complaints for which a proceeding has not yet been initiated and violations disclosed during the license renewal process. If appropriate, the Commission will dispose of pending enforcement matters prior to the reverse auction, such as in cases that do not require further inquiry and can be dismissed or resolved with the issuance of an admonishment or the execution of a consent decree.

247. The Commission delegates authority to the Wireless Telecommunications, Media, and Enforcement Bureaus to include information about any pending enforcement matters against a reverse auction applicant that cannot be resolved before the reverse auction when notifying an applicant of its eligibility to participate in the auction. Along with that notice, the Bureaus will indicate the amount of reverse auction proceeds that will be placed in escrow should the broadcaster submit a winning license relinquishment bid. This sum will represent the maximum amount necessary to cover a potential forfeiture based on enforcement matters existing at that time. The escrow agreement will terminate: (1) At the later of (i) two years after the date on which the licensee relinquishes the station's license, or (ii) after the resolution of a complaint filed to collect a forfeiture; or (2) when all of the escrow funds are distributed. At termination of the escrow agreement, any funds remaining in the account will be remitted to the reverse auction winner. The broadcaster must agree to the escrow arrangement in order to participate in the reverse auction. More detailed procedures and the exact form of the escrow agreement will be discussed in the *Procedures PN.*

(iv) Relinquishment of Expired or Revoked Licenses and Downgraded Class A Licenses

248. The Commission will not allow a station to participate in the reverse auction if its license has expired, is subject to a revocation order (collectively a ''license validity proceeding''), or is for a Class A station that is subject to a downgrade order, provided the license validity proceeding or Class A downgrade order has become final and non-reviewable by a date prior to commencement of the auction that will be specified in the *Procedures PN.* If the license invalidity determination becomes final between the time the Commission certifies a broadcaster's eligibility to participate in the reverse auction and commencement of reverse auction bidding, then it will exclude the broadcaster from participating in the reverse auction. If such a proceeding or order has not become final and non-reviewable by that date, the Commission will allow the licensee to voluntarily relinquish its spectrum usage rights in the reverse auction. Should the licensee submit a winning bid, the Commission will place its reverse auction proceeds in escrow using the procedures outlined above pending the final outcome of the proceeding or order. If the decision becomes final and non-reviewable, then the money held in escrow will be deposited with the other reverse auction proceeds. In the event that a winning bidder subject to a pending license validity proceeding or Class A downgrade order prevails in its appeal, the Commission will release from escrow to the licensee its reverse auction payment less any forfeiture that may result.

b. Bid Options

249. Section 6403(a)(2) of the Spectrum Act requires the Commission to make available three voluntary relinquishment options to eligible full power and Class A broadcast television licensees: (1) ''all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel . . .'' (license relinquishment bid); (2) ''all usage rights with respect to an ultra-high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel . . .'' (UHF-to-VHF bid); and (3) ''usage rights in order to share a television channel with another licensee'' (channel sharing bid).

(i) License Relinquishment Bid

250. The Commission will offer a license relinquishment bid option as required by the statute regardless of whether it may lead to a loss of service or specific programming.

(ii) UHF-to-VHF Bid

251. In addition to allowing bids to move from a UHF to a VHF channel as required by the Spectrum Act, the Commission adopts refinements to the UHF-to-VHF bid option that will allow bidders to limit their bid to the high VHF band or the low VHF band. A bidder will not be able to specify the exact channel in the high- or low-VHF band to which it will be reassigned.

252. In addition, the Commission adopts the proposal to afford favorable consideration to post-incentive auction requests for waivers of the VHF power and height limits for winning UHF-to-VHF bidders that may be necessary to resolve coverage problems on their new channels. The Commission declines, however, to establish a rebuttable presumption that such waivers are in the public interest. The Commission will consider such waiver requests on a case-by-case basis after completion of the repacking process. The Commission will afford such requests favorable consideration and grant them where possible. Also, the Commission will not adopt WLFM, LLC's request that a licensee which agrees to surrender a UHF channel in return for operation on VHF channel 6 be given additional flexibility to use Axcera's Bandwidth Enhancement Technology.

(iii) Channel Sharing Bid

253. This bid option allows broadcasters to relinquish ''usage rights in order to share a television channel with another licensee.'' Under the Commission's rules, a full power television station must locate its transmitter at a site from which it can place a principal community contour over its entire community of license. The Commission will allow a channel sharing bidder (i.e., a sharee) to change its community of license in cases where it cannot satisfy the community of license signal requirement operating from the host (i.e., the sharer) transmitter site, provided that the sharee chooses a new community of license that, at a minimum, meets the same allotment priorities as its current community.

254. A bidder may not make a community of license change that will result in a change in its DMA. Second, a sharee may change its current community of license only in cases where it cannot satisfy the community of license signal requirement operating from the host (i.e., the sharer) transmitter site. A channel sharee will be asked to indicate in its pre-auction application whether it can meet its community of license requirements from the proposed sharer's site. An applicant that indicates its inability to do so must provide the name of the new community of license it proposes to select if its channel sharing bid is accepted, and certify in the application that the new community meets the same, or a higher, allotment priority as its current community. Finally, the Commission clarifies that it will allow VHF-to-UHF channel sharing bids.

(iv) Additional Bid Options

255. In the *NPRM,* the Commission sought comment on additional bid options not specified in the Spectrum Act—specifically whether to offer reverse auction participants other possibilities, such as enabling high VHF stations to move to a low VHF channel, or more broadly, it asked for comment on potential ways to incorporate bidding in exchange for accepting such broadcast limitations as additional interference or a smaller service area.

256. In the Order we conclude that we will offer an option for high VHF stations to move to low VHF channels, and as with UHF-to-VHF bids, we will afford favorable consideration to post-incentive auction requests for waivers of the VHF power and height limits for winning high-VHF-to-low-VHF bidders that may be necessary to resolve coverage problems on their new channels. This option expands the set of stations that will have the option of moving to a low VHF station, and in so doing, may facilitate greater efficiency in repacking existing VHF stations and repurposing 600 MHz spectrum. While the Spectrum Act prohibits the Commission from involuntarily reassigning a station from a high to a low VHF channel as part of the repacking process, by offering this bid option, we create a mechanism by which high VHF stations may volunteer to be reassigned, as well as an incentive for doing so. Although the Spectrum Act does not specifically list high-VHF-to-low-VHF bids as one of the reverse auction bid options, it does not preclude the Commission from adopting this additional bid option pursuant to its broad spectrum management authority.

257. The reverse auction bidding options afforded by the Spectrum Act, together with allowing broadcasters moving from a UHF channel to specify a high or low VHF channel and allowing broadcasters to move from a high to a low VHF channel, provide meaningful options for broadcasters that will achieve the goals of the auction. With respect to any additional bid options beyond going off the air, channel sharing, or moving to a lower band, we conclude that, whatever merits any particular option might have for any particular licensee, the complexity created for auction participants would outweigh potential benefits and, therefore, we decline to adopt other proposed bid options. The record as a whole supports this conclusion.

c. Confidentiality and Prohibition of Certain Communications

(i) Confidentiality

258. We will take all reasonable steps necessary to protect the confidentiality of Commission-held data of broadcast television licensees participating in the reverse auction. Section 6403(a)(3) of the Spectrum Act requires the Commission to ''take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction . . . including withholding the identity of such licensee until the [spectrum] reassignments and reallocations (if any) . . . become effective, as described in subsection (f)(2).'' *See* Spectrum Act § 6403(a)(3). We will protect the confidential information of all reverse auction applicants, whether or not the Commission determines that their applications are complete and in compliance with our rules. In addition, we will continue to protect confidential information pertaining to unsuccessful bids until two years after the effective date. Furthermore, in the event that there is no effective date, we will continue to protect confidential information pertaining to the reverse auction until two years after the completion of the reverse auction. We also amend the Commission's FOIA disclosure rules to accommodate the confidentiality rules that we adopt today. We note that the Commission may disclose confidential information if it is required to do so by law, such as by court order.

259. For the purpose of the statutory confidentiality requirement, we interpret the protections afforded to broadcast television licensees ''participating'' in the reverse auction more broadly in order to facilitate broadcaster participation. For the purpose of the statutory requirement that at least two competing licensees ''participate'' in the reverse auction, we will consider a broadcast television licensee to be a participant only if its application is found to be complete and in compliance with our application rules. *See* Spectrum Act § 6402. The difference in our interpretation of the terms ''participate'' (section 6402) and ''participating'' (section 6403(a)(3)) arises from the difference between the underlying purpose of each provision. Whereas section 6402 ensures a minimum level of competition in the reverse auction, a purpose which weighs in favor of including only those applicants that will be permitted to submit bids in the reverse auction, section 6403(a)(3) promotes broadcaster participation by ensuring that licensees' identities will not be revealed until after the auction, a purpose which weighs in favor of protecting any applicant whether or not it is permitted to submit bids in the auction. In any event, we exercise our discretion to treat such information as confidential consistent with the principle that disclosure of this information would likely ''cause substantial harm to the competitive position of the person from whom the information was obtained.'' *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission,* Report and Order, 13 FCC Rcd 24816, 24819, para. 4 (1998).

260. From the time a broadcast television licensee applies to participate in the reverse auction until the spectrum reassignments and reallocations become effective, we will deem the following information confidential and subject to protection by the Commission: the name of the applicant licensee; the licensee's

channel number, call sign, facility identification number, and network affiliation; and any other information that may reasonably be withheld to protect the identity of the licensee, as determined by the Commission. We note that other than a broadcast television licensee's actual identity, any particular information about an individual characteristic of a licensee may or may not facilitate identification of the licensee. We will protect non-identifying information to the extent that it may reasonably be withheld to protect the identity of the licensee, as determined by the Commission. When the spectrum reassignments and reallocations become effective, the Commission will disclose the identities of the winning bidders and their winning bid amounts. Until two years after the effective date, the Commission will continue to protect the above-referenced confidential information pertaining to any unsuccessful bid. In the event that there is no effective date, we will continue to protect confidential information pertaining to the reverse auction until two years after the completion of the reverse auction; however, the Commission may release data aggregating confidential information if needed to explain the outcome of the auction—e.g., the aggregate share of proceeds unsuccessfully sought by reverse auction bidders.

261. These additional steps are necessary and are reasonable under the circumstances to protect the confidentiality of licensee data. Participants in the reverse auction will submit bids to exit an ongoing business, or to make significant changes to that business (e.g., by changing the channels on which they operate or agreeing to share a channel). Section 6403(a)(3) of the Spectrum Act recognizes the potential competitive sensitivities of the information that such existing licensee bidders provide to the Commission in this context.

262. A few commenters, worried that disclosing broadcaster participation could negatively impact broadcasters, suggest that the Commission maintain the confidentiality of broadcaster identities beyond the effective date, or even in perpetuity. We conclude that delaying the release of confidential information regarding unsuccessful bids until two years after the effective date will permit sufficient time to pass to ameliorate the potential competitive harms identified by commenters, and should facilitate broadcaster participation. Two years after the incentive auction, after substantial market changes have occurred and as the post-auction relocation process nears completion, competitors, investors, and others will be less likely to make assumptions based solely on a particular broadcast television licensee's participation in the reverse auction or the bid amounts that it submitted at that time. Moreover, the record contains no evidence contradicting this conclusion.

263. We will not keep confidential the identities of unsuccessful reverse auction participants in perpetuity since protecting the identities of unsuccessful bidders in perpetuity would not be a ''reasonable step'' necessary to protect the confidentiality of participating broadcasters' data. In determining what steps to protect participants' information are ''reasonable'' to take, we also consider the other objectives of the Spectrum Act, including the goal of using market forces to repurpose spectrum for mobile broadband—an objective that requires public trust in the auction process, and therefore militates in favor of transparency into the process. Particularly given the novelty and complexity of this new system of competitive bidding, it is imperative that we eventually release as much information as possible about the bids and the bidding process, and the Commission routinely releases bidding information after auctions to allow for such analysis to take place. The bidding information that we release will allow winning bidders, unsuccessful bidders, and other interested third parties to review and test the auction results bid-by-bid. By committing to releasing this information in the future, we hope to facilitate participation in the auction by providing assurance that the process will be fair and in accordance with Commission rules. Although it is appropriate to delay the opportunity for such analysis given the unique circumstances here, it would not be reasonable to prevent this analysis entirely. Further, the full transparency of the auction process should not be delayed for a lengthier period of time given the public interest in transparency and public trust and confidence in the auction system. Delaying the availability of specific bidding information for two years is a reasonable step necessary to protect participants' confidentiality in light of the circumstances, including our interest in promoting broadcaster participation in the reverse auction and the public interest in transparency.

264. We amend our FOIA disclosure rules to accommodate the confidentiality rules that we adopt in the Order. Specifically, the information that is protected by the confidentiality rules described above will be added to the list of materials accepted by the Commission on a confidential basis. *See* 47 CFR 0.457(d)(1). Thus, if reverse auction applicants are satisfied with the scope of the protection afforded by these confidentiality rules, it will be unnecessary for them to submit a request for non-disclosure. We also amend 47 CFR 0.457(d) of our rules to include such records in the list of those not routinely available for public inspection. Because the Spectrum Act was enacted after the OPEN FOIA Act of 2009, FOIA exemption three is inapplicable to such records. As such, we will permit disclosure of such records under FOIA only pursuant to a ''persuasive showing'' under 47 CFR 0.457(d). Given the legislative judgment reflected in the Spectrum Act, we would not expect such a showing to succeed unless it included a demonstration either that the relevant time period for protection of the confidential information has passed or that nondisclosure of the particular data sought is otherwise beyond the ''reasonable steps necessary'' to protect the confidentiality of Commission-held data of a reverse auction participant. It is also appropriate to adopt a rule to implement FOIA's exemption for confidential trade secrets and commercial or financial information for the purposes of the reverse auction; however, we tailor the amendment to the Commission's FOIA disclosure rules to conform to the scope of the confidentiality rules that we adopt here.

265. In this context, any response by a reverse auction participant within the relevant time period will be exempted from our *ex parte* rules to the extent necessary to protect the licensee's confidentiality. Ordinarily, FOIA request proceedings are subject to our permit-but-disclose procedures. However, we may modify the applicable *ex parte* rules by order, letter, or public notice. In this unique context, where the party's identity itself has been treated as confidential, such a modification is warranted. *See Media Bureau Issues Limited Modification to Ex Parte Requirements for Broadcasters Filing Notices in the Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Proceeding,* GN Docket No. 12–268, Public Notice, DA 14–268 (2014).

266. We note that the confidentiality rules that we adopt impose restrictions on the Commission's disclosure of certain information during certain time periods. We decline to extend the confidentiality requirements that we adopt here beyond the Commission to applicants and parties to the auction. The Commission's confidentiality obligations, along with the rule

prohibiting certain communications and auction procedures regarding available information, will provide ample protection to the identities and other confidential information of reverse auction participants. We do not wish to burden auction participants with additional communications prohibitions or other confidentiality requirements after the spectrum reassignments and reallocations—if any—become effective, particularly given that any such restrictions would provide only a minimal benefit to the unsuccessful reverse auction participants—namely, protection from the educated guesses of other auction participants.

267. The confidentiality rules do not prohibit a broadcast television licensee from disclosing before the auction the mere fact that it intends to participate in the auction, or, after the auction, the results of its participation. However, other rules independently may prohibit certain communications relating to auction participation. In particular, pursuant to the rule prohibiting certain communications described below, beginning on the reverse auction application filing deadline and until a public notice announces the results of the incentive auction, all full power and Class A broadcast television licensees are prohibited from directly or indirectly disclosing incentive auction applicants' bids or bidding strategies to any forward auction applicant or to any other full power or Class A broadcast television licensee, subject to certain specific exceptions.

268. Given the importance of the confidentiality protections to promote broadcaster participation in the reverse auction, we decline to adopt the proposal in the *NPRM* to render information publicly released by a licensee about its participation in the reverse auction no longer confidential and therefore no longer subject to protection by the Commission. However, we caution licensees that although the confidential information that they file with the Commission in their pre-auction applications will not be made available publicly while the confidentiality rule applies, documents that are filed through the Commission's Electronic Comment Filing System (''ECFS'') and other FCC databases are publicly available.

269. The Commission noted in the *NPRM* that participants in the reverse auction may have legal obligations to disclose information that the Commission may be required to keep confidential. We decline to design the competitive bidding rules solely to avoid disclosure obligations imposed by other governmental entities. Neither we, nor the commenters, have the power to determine parties' precise obligations under rules enforced by other agencies.

(ii) Prohibition of Certain Communications

270. In the Order we conclude that beginning at the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction have been announced by public notice, all full power and Class A broadcast television licensees (collectively ''covered television licensees'') are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other covered television licensee or to any forward auction applicant, subject to certain exceptions described below. For the purposes of the rule that we adopt here, we will apply the same definition of forward auction ''applicant'' that applies to the rule for spectrum license auctions generally. *See* 47 CFR 1.2105(c)(7)(i). Generally, ''covered television licensees'' include all broadcast television licensees that are or could become eligible to participate in the reverse auction, as well as all channel sharers. The rule that we adopt here is intended to reinforce existing antitrust laws, facilitate detection of collusive conduct, and assure incentive auction participants that the auction process will be fair and objective.

271. The rule applies solely to communications that directly or indirectly disclose an incentive auction applicant's bids or bidding strategies to any covered television licensee or to any forward auction applicant. The prohibition applies during a limited period of time, and we anticipate that the rule will serve our purposes with minimal intrusion into broadcasters' routine business practices, since covered television licensees may structure their business practices as needed to avoid violations, such as by instituting internal controls with respect to any information about incentive auction applicants' bids and bidding strategies.

272. This provision prohibits certain communications between covered television licensees, not just reverse auction applicants. Given the Commission's statutory obligation to protect the identities of reverse auction participants, it is not practicable to limit the prohibition to communications between reverse auction applicants, since doing so would require disclosing their identities. *See* Spectrum Act § 6403(a)(3). Nor is the rule limited to communications between covered television licensees within the same geographic area. Reverse auction participants will compete on a national basis for the limited funds that forward auction participants will contribute for new flexible-use licenses, and, due in part to the consequences that the repacking of broadcast television licensees may have across multiple geographic areas, all reverse auction participants will compete with each other for the auction system to accept their offers to relinquish spectrum usage rights. Thus, it is appropriate to limit communications between covered television licensees on a national level.

273. To promote a fair and competitive auction, the prohibition against communicating information regarding incentive auction applicants' bids and bidding strategies will apply across the reverse and forward auctions. Therefore, the rule prohibits specified communications between a covered television licensee and a forward auction applicant.

274. This prohibition across the reverse and forward auctions applies regardless of the geographic license areas where forward auction applicants intend to bid. As noted above, the results of the reverse auction for one participant may have effects across multiple geographic areas. This restriction will inhibit the ability of covered television licensees and forward auction applicants to form side agreements that could have anticompetitive effects and could alter the outcome of the incentive auction.

275. With respect to covered television licensees, the prohibition includes all controlling interests in the licensee, and all directors, officers, and governing board members of the licensee. This approach is analogous to the definition of ''applicant'' that applies to spectrum license auctions and that was proposed for purposes of the rule prohibiting certain communications in the reverse auction. That is, for purposes of this rule, such parties will be considered to be the covered television licensee based on their relationship with such a licensee. The prohibition includes the controlling interests, directors, officers, and governing board members of a covered television licensee as of the deadline for submitting applications to participate in the reverse auction, and any additional such parties at any subsequent point prior to the date when the prohibition ends. For example, if a covered television licensee appoints a new officer after the application deadline, that new officer would be subject to the prohibition.

276. Controlling interests include individuals or entities with positive or

negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

277. Members of the licensee's governing board are included in recognition that NCE stations and certain other stations may be operated by non-profit entities. Members of a governing board may be apprised of incentive auction applicants' bids and bidding strategies, and they should not be permitted to communicate such information to other covered television licensees or to forward auction applicants unless an exception to the prohibition applies.

278. We note that the list of parties deemed to be the covered television licensee is not an exclusive list of parties that might engage in prohibited communications on behalf of a licensee. While communications by a listed party will necessarily be attributed to the associated covered television licensee, whether any potentially prohibited communications by other associated parties (or employees) are attributed to a licensee would be a fact-based determination. Specifically, a covered television licensee may not use agents or other conduits to convey information to any other covered television licensee or to any forward auction applicant that would otherwise be prohibited if communicated by the covered television licensee.

279. We adopt two exceptions to this rule prohibiting certain communications. First, covered television licensees that share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction may communicate with each other regarding incentive auction applicants' bids and bidding strategies without violating the prohibition. Similarly, if a controlling interest, director, officer, or governing board member of a covered television licensee is also a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in a forward auction applicant, communications between the covered television licensee and the forward auction applicant will qualify for this exception. An overly broad prohibition restricting communications between a broadcast television licensee and its controlling interests during the reverse auction could unduly restrict bidders' flexibility. This exception to the prohibition recognizes various interrelationships that may exist between covered television licensees and permits communications between such licensees that will facilitate strategic decisions regarding multiple licensees in real time as various contingencies unfold during the auction. Thus, the exception will allow such licensees to participate more fully, particularly in a multiple-round auction, such as a descending clock auction.

280. We note that this first exception only applies to controlling interests, directors, officers, and governing board members of a covered television licensee as of the deadline for submitting applications to participate in the reverse auction, and to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in a forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction. Consequently, if a covered television licensee appoints a new officer after the application deadline, that new officer would be subject to the rule and not included within the exception.

281. Under the second exception, all parties to a channel sharing agreement disclosed on a reverse auction application may communicate with each other about reverse auction applicants' (but not any forward auction applicants') bids and bidding strategies. Allowing such communications will encourage channel sharing relationships, allowing potential channel sharers to fully engage as various options are presented during the auction process. The exception to the prohibition for parties to a channel sharing agreement will apply only if the agreement has been executed prior to the reverse auction application filing deadline and has been disclosed on the application. Allowing channel sharing negotiations to commence during the auction as one commenter suggests presents too high of a risk of agreements to reduce competition in response to auction conditions.

282. We decline to adopt any exceptions based on the existence of other particular types of agreements or arrangements between covered television licensees, such as local marketing agreements (''LMAs''), joint sales agreements (''JSAs''), shared services agreements (''SSAs''), network affiliation agreements, or any other similar cooperative arrangements. As described above, covered television licensees with such agreements may continue to communicate during the relevant time period so long as their communications do not directly or indirectly disclose incentive auction applicants' bids or bidding strategies.

283. We also decline to adopt an exception based on any pre-auction agreement, other than a channel sharing agreement, disclosed on an application to participate in the reverse auction. While our rules apply an exception for disclosed agreements in our typical spectrum license auctions, the reverse auction warrants a different approach. In the reverse auction, participants are relinquishing spectrum usage rights, not seeking licenses, and there is not the same need for agreements to reduce entry barriers for smaller firms and promote competition.

284. We reject one commenter's argument that the *NPRM* failed to include sufficient information to allow that commenter to comment on how to apply the Commission's anti-collusion rules in the context of the reverse auction. The Commission both discussed the proposed prohibition at length and included the language of a proposed rule to 47 CFR 1.2205. Furthermore, the proposed rule and the associated discussion were based on the Commission's existing rule for spectrum license auctions, with respect to which there is ample precedent. The purpose of the *NPRM* was precisely to solicit comment on whether the reverse auction context warrants any changes to the Commission's established rule.

285. Any party that makes or receives a communication regarding an incentive auction applicant's bids or bidding strategies that may violate this rule must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The obligation to make a report continues until the report is made and a failure to make a timely report constitutes a continuing violation. Parties must

adhere to any applicable antitrust laws, including any additional communications restrictions. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to DOJ for investigation. Parties who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may, among other things, be subject to forfeiture of their winning bid incentive payments and revocation of their licenses, where applicable, and may be prohibited from participating in any other auctions.

d. Two Competing Participants Requirement

286. Under section 6402 of the Spectrum Act, the Commission cannot accept the relinquishment of spectrum usage rights unless at least two competing licensees participate in the reverse auction. In the *NPRM,* the Commission proposed to incorporate this requirement into the competitive bidding rules for the broadcast television spectrum reverse auction and sought comment on the parameters of the rule.

287. In the Order we conclude that ''two competing licensees participate'' in the reverse auction portion of the broadcast television spectrum incentive auction if more than one broadcast television licensee's pre-auction application is found to be complete and in compliance with the application rules, and if at least two such licensees are not commonly controlled. Our conclusion is based on two supporting conclusions. First, we conclude that a broadcast television licensee will be a ''participant'' if it has submitted a pre-auction application to be able to bid in the reverse auction that is found to be complete and in compliance with the application rules. The fact that an applicant has the ability to submit a bid in the reverse auction as designed under our rules, regardless of whether it ultimately chooses to do so, is sufficient to satisfy the ''participation'' component of this statutory requirement. The knowledge that another party might bid will create competitive pressure for a second bidder to accept lower incentive payments than it would absent any competition.

288. Second, we conclude that for purposes of the Broadcast Television Incentive Auction, any broadcast television licensees that participate in the reverse auction and that are not commonly controlled will ''compete'' with one another. Regardless of their pre-auction geographic or channel location, all participants in the reverse auction will compete to receive incentive payments from the same limited source—the aggregate proceeds of the forward auction. Moreover, where repacking one station may have widespread effects across geographic areas with possible nationwide band plan implications, participants will affect and compete with licensees far beyond their contour, DMA, or channel. This competition for the forward auction proceeds satisfies the Spectrum Act's requirement that at least two competing licensees participate in the reverse auction. The comments submitted in the record support our interpretation.

289. We note that the two competing participants requirement applies to any reverse auction component of an incentive auction conducted under section 6402 of the Spectrum Act, including the broadcast television spectrum incentive auction. As the two competing participants requirement is a ''generic'' provision applicable to any incentive auction conducted under section 6402 of the Spectrum Act, the Commission may apply this requirement differently in other reverse auctions, depending upon the particular eligibility criteria, auction design, and other circumstances involved in such reverse auctions.

e. Information and Certifications Required in Application To Participate

290. In the *NPRM,* we proposed to require submission of a pre-auction application by entities interested in participating in the reverse auction. We sought comment on proposed rules regarding the contents of the pre-auction application, on what information applicants should be required to provide, what certifications they should be required to make regarding their qualifications to participate, and the appropriate party to consider as the applicant.

291. In the Order we adopt the proposal to require potential bidders to submit a pre-auction application to establish their eligibility to participate in the reverse auction. This requirement balances the need to collect essential information with administrative efficiency. The pre-auction application due dates and filing information will be forthcoming in the *Procedures PN.*

292. We will require that each auction applicant submit information to establish its identity, information concerning the relevant license(s) and associated spectrum usage rights, and information regarding the parties with ownership interest in the applicant. Additionally, an applicant that is proposing to share a channel with another station must confirm that the proposed arrangement will not violate the Commission's media ownership rules and must provide information concerning the channel sharing arrangement, including a copy of the executed channel sharing agreement.

293. We seek to make participation in the reverse auction as easy as possible for broadcasters. However, the need for sufficient and up-to-date information regarding broadcast television licensees that may make binding bids to relinquish spectrum usage rights leads us to decline various suggestions to further streamline or simplify the pre-auction application process. Information required by the Commission in other contexts is not necessarily sufficient for the reverse auction. Any attempt to rely on other filings would necessitate requiring potential participants to confirm that all information on file with the Commission is current and, if necessary, update any information that is outdated. Even then, such updates may not obviate the need for an auction application.

294. We decline to require applicants to provide a two year program history log in order to help the Commission consider the ramifications of accepting a particular relinquishment bid, as one commenter suggests. We also decline to adopt suggestions to require applicants to provide additional information about their ownership interests for the purpose of determining the potential impact of the incentive auction on broadcast ownership diversity. We recognize the importance of diversity in broadcast ownership and support efforts to maintain such diversity. The suggested requirement, however, would go beyond the scope of information necessary to determine whether an applicant is qualified to participate in the reverse auction or to implement the Commission's auction rules.

295. We will require an applicant to make certain certifications on its pre-auction application as to its legal, technical, and other qualifications and eligibility to participate in the reverse auction, including a certification as to the applicant's compliance with the national security restriction in section 6004 of the Spectrum Act. Requiring a certification of an applicant's qualifications will help to ensure that applicants submit accurate information. Applicants making false certifications to the Commission expose themselves to liability. Applicants should take care to review their licenses and the information in their pre-auction applications before making the required certifications and be prepared to

document their review confirming that they meet the applicable requirements, if necessary.

296. We note that for spectrum license auctions, the Commission typically releases an interactive auction tutorial. The tutorial typically demonstrates the Commission's web-based auction application. Consistent with prior practice, we anticipate offering a similar type of tutorial for the incentive auction so that potential participants have the opportunity to become familiar with the auction application system prior to the pre-auction application deadline.

(i) Applicant

297. The Commission proposed in the *NPRM* that the applicant identified on the pre-auction application for the reverse auction must be the licensee. The Order adopts this approach, under which, a corporate parent would not be able to file one application for licenses held by different licensee subsidiaries; however, a licensee holding multiple licenses would only be required to file one application for all such licenses for which it wishes to submit bids in the reverse auction. Requiring the applicant to be the licensee will promote accountability and transparency since the licensee is the entity that holds the spectrum usage rights that may be relinquished in the reverse auction. This decision is consistent with the Spectrum Act's use of the term ''broadcast television licensee.''

298. For broadcast television licensees that would relinquish spectrum usage rights in exchange for an incentive payment and subsequently share a channel with another broadcaster, the Commission will only require that the sharee(s)—the station(s) that would relinquish their frequencies in order to move to the sharers' frequencies—apply to participate in the reverse auction. We note that more than two stations may share a channel.

299. It is unnecessary for the sharer to submit an application to participate in the reverse auction with respect to the shared station unless it intends to submit its own bid. We will, however, require prospective sharers to provide any necessary certifications with respect to the channel sharing agreement in addition to sharees. It is reasonable and not unduly burdensome to require sharers to make such certifications because, as Commission licensees, they are required to comply with all applicable Commission rules and regulations, including the rules we adopt in the Order concerning channel sharing arrangements. Further, as a sharer voluntarily enters into a channel sharing arrangement, it is reasonable to require a sharer to make certifications in exchange for the ability to share a channel with another broadcaster. Moreover, the benefit of requiring a sharer to make certifications that are designed to ensure compliance with the Commission's rules and regulations concerning channel sharing arrangements outweighs the unlikely risk of potentially deterring broadcaster participation in the reverse auction.

(ii) Spectrum Usage Rights To Be Offered

300. In the *NPRM,* the Commission proposed to require information in the pre-auction application concerning the license(s) and associated spectrum usage rights that may be offered in the reverse auction. In the Order we adopt the proposal to require reverse auction applicants to specify which license(s) and associated spectrum usage rights they might offer in the reverse auction. We further require that a reverse auction applicant shall provide any information needed to assure that the offered relinquishment pursuant to the application is consistent with any applicable Commission rules or action to enforce its rules. Such information may include but is not limited to anything related to ownership of, or an enforcement action concerning, the license(s) identified in the application to participate. The Commission needs this information in order to evaluate bids and run the various repacking algorithms. In addition, the Commission can utilize the information to assist in identifying auction participants offering spectrum usage rights subject to a pending license renewal application or an enforcement action, which may subject participants to liabilities that will have to be addressed before such participants can relinquish their licenses in exchange for an incentive payment.

(iii) Ownership Information

301. In the *NPRM,* the Commission proposed to require a potential bidder to include in its pre-auction application its ownership information as set forth in 47 CFR 1.2112(a) of the rules, and for NCE stations, information regarding the licensee's governing board and any educational institution or governmental entity with a controlling interest in the station, if applicable. For the purpose of the incentive auction, the Commission needs to be informed of an applicant's ownership structure for several reasons, including: (1) To confirm that the applicant is who it claims to be and actually has rights to the license(s) it may offer to relinquish; and (2) to implement the prohibition of certain communications. Thus, in the Order we adopt the proposed rule requiring a reverse auction applicant to include in its pre-auction application its ownership information as set forth in 47 CFR 1.2112(a) of the Commission's rules.

302. In recognition that NCE stations and certain other stations may be operated by non-profit entities, we will require a non-profit licensee to submit information regarding its governing board and to identify any educational institution or governmental entity with a controlling interest in the applicant, if applicable. The ownership information we currently have on file under our existing broadcast television rules is inadequate for the purposes of evaluating an applicant's eligibility to participate in the broadcast television spectrum reverse auction and for implementing the competitive bidding rules. We cannot utilize information on file in an applicant's most recent Form 323 or 323–E without, at a minimum, requiring the applicant to review and update the information. Moreover, as those forms were not designed to collect information for competitive bidding purposes, the forms may be over- and/or under-inclusive for auction purposes, even if an applicant's form is up-to-date. While we appreciate that broadcast television licensees are familiar with these forms and the information required, more streamlined ownership information is warranted solely for the purpose of the reverse auction.

(iv) Channel Sharing Agreement

303. In the *NPRM,* the Commission sought comment on what information regarding channel sharing agreements it should require in order to assess an applicant's eligibility to participate in the reverse auction. We will require a channel sharing applicant to provide sufficient information and certifications to enable the Commission to evaluate and accept a channel-sharing bid. This includes, for example, a channel sharing applicant submitting an executed copy of the channel sharing agreement, and certifying whether it can meet its community of license requirements from the proposed sharer's site, and if not, that the new community of license proposed meets the same, or a higher, allotment priority as its current community.

304. Ordinarily, the Commission does not involve itself in private contractual agreements between stations. While channel sharing agreements should be developed through private negotiations, public interest considerations demand that the Commission impose certain basic requirements on the terms and

conditions of channel sharing agreements. Therefore, we will require a channel sharing applicant to certify that the channel sharing agreement is consistent with all relevant Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel.

305. As channel sharing agreements will contain information that identifies broadcast television licensees participating in the reverse auction, the Commission will take all reasonable steps necessary to maintain the confidentiality of such agreements in accordance with section 6403(a)(3) of the Spectrum Act and the rules adopted in this proceeding. Thus, we do not anticipate that parties will be discouraged from participating in the reverse auction by these requirements. Further, it is reasonable to require a channel sharing applicant to submit an executed copy of its channel sharing agreement as an indication of its good faith and intent to follow through with the channel sharing arrangement in the event the Commission accepts its channel sharing bid.

(v) National Security Certification

306. Section 6004 of the Spectrum Act specifies that ''a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant'' may not participate in a system of competitive bidding that is required to be conducted by Title VI of the Spectrum Act. This national security restriction applies to the broadcast television spectrum reverse and forward auctions since Title VI requires the Commission to conduct both auctions. In the *NPRM,* the Commission proposed that a reverse auction applicant be required to certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the pre-auction application are not persons who have ''been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' For purposes of this certification, the Commission proposed to define ''person'' as an individual, partnership, association, joint-stock company, trust, or corporation. It also proposed to define ''reasons of national security'' to mean matters relating to the national defense and foreign relations of the United States.

307. The Order adopts these proposals. The definitions of ''person'' and ''reasons of national security'' the Commission adopts are consistent with how those terms are used in other federal programs and are a reasonable interpretation of those terms in section 6004. *See, e.g.,* 47 U.S.C. § 153(39); 18 U.S.C. App. 3 § 1(b). All of the related individuals and entities required to be disclosed on a potential bidder's pre-auction application are ''persons'' subject to this statutory participation restriction. Where the applicant is a legal entity rather than an individual, it has been the Commission's practice to consider the legal entity's controlling interests, holders of partnership and ownership interests, certain shareholders, and officers and directors to be applicants by extension. Including these related individuals and entities within the definition of ''person'' is entirely consistent with the intent of the national security restriction. Indeed, if such related individuals and entities were not considered ''persons,'' parties that are statutorily prohibited from participating in the reverse auction could circumvent the national security restriction simply through the creation of a separate entity to act as the ''applicant.''

308. As with other required certifications, a reverse auction applicant's failure to include the required national security certification by the applicable filing deadline would render its pre-auction application unacceptable for filing, and its application to participate in the reverse auction would be dismissed with prejudice.

f. Procedures for Processing Pre-Auction Application

309. In the *NPRM,* the Commission proposed to process applications to participate in the reverse auction in a manner similar to the processing of applications to participate in spectrum license auctions. More specifically, the Commission proposed that no application would be accepted if, by the initial deadline, the applicant had failed to make the required certifications. Applicants would be afforded an opportunity to cure defects identified by the Commission after an initial review of the application to participate. If an applicant fails to make necessary corrections before a resubmission deadline, its application would be dismissed.

310. The Commission further proposed that the applicant must amend or modify the application as promptly as possible, and in any event within five business days, whenever the information furnished in a pending pre-auction application is no longer substantially accurate and complete in all significant respects. Certain minor changes would be permitted subject to a deadline specified by public notice, but major changes to the pre-auction application would not be permitted. Major amendments would include, but would not be limited to, changes in ownership of the applicant or the licensee that would constitute a substantial assignment or transfer of control. In addition, major amendments would include changes to any of the required certifications and the addition or removal of licenses or authorizations identified on the pre-auction application for which the applicant intends to submit bids. Minor amendments would include any changes that are not major, such as correcting typographical errors and supplying or correcting information requested by the Commission to support the certifications made in the application. Finally, to protect the confidentiality of the identities of all reverse auction participants, the Commission proposed to notify the applicants individually as to the status of their applications and whether they are qualified bidders, i.e., are qualified to participate in the reverse auction.

311. The Order adopts these proposals. The process has proven effective in the Commission's experience with spectrum license auctions. Pre-auction application processing provides an opportunity to address concerns regarding information provided by applicants, and helps to assure their eligibility to participate, without unduly limiting participation by qualified parties. Based on our experience with spectrum license auctions, requiring the submission of an application to participate is important for a number of reasons, including ensuring that the information the Commission relies on is up-to-date. Limiting permissible changes in the ownership of auction applicants likewise assures that the Commission's review of applicant qualifications remains valid over the course of the auction.

312. One commenter suggests that any otherwise-eligible broadcast television licensee who initially opted not to participate in the reverse auction ought to be able to enter the ''ongoing'' reverse auction without first applying to participate. We decline to adopt that suggestion. Allowing broadcast television licensees who have not applied to participate in the reverse auction, and thus have not been vetted by Commission staff, to enter the

''ongoing'' auction presents an unwarranted risk that ineligible parties might bid in the auction and would add unnecessary complexity to the reverse auction design.

2. Bidding Process

313. The format for reverse auction bidding in each stage will be a descending clock auction incorporating multiple bidding rounds. We address the basic structure of our chosen descending clock auction design in terms of three basic elements: (i) Bid collection procedures that determine how bids are gathered using a descending clock auction format; (ii) assignment procedures that evaluate bids sequentially, taking into account interference potential, to determine which bids for relinquishment are accepted; and (iii) pricing procedures that determine the payment that a broadcaster relinquishing spectrum usage rights will receive. Below, we address these three elements from the perspective of a single television station bidding in a single stage of the auction.

a. Bid Collection Procedures: Descending Clock Format

314. In the *NPRM,* the Commission discussed two basic reverse auction bid collection procedures. The first was a single round mechanism and the second was a multiple round procedure—a descending clock auction. The *NPRM* also discussed an additional bid collection procedure—''intra-round bidding''—that would enable bidders to indicate a specific price, between the opening and closing prices in a round, below which a bid option would not be acceptable.

315. The Order adopts a descending clock auction format for the reverse auction, and bidders will have the option of making intra-round bids. However, the rules do provide the necessary flexibility to vary aspects of the reverse auction bidding process if it becomes necessary to do so because of circumstances that develop during the pre-auction process. In each round, bidders will be faced with relatively simple choices of determining whether they are still willing to accept the current prices for bid options. Observing the sequence of prices over multiple rounds will give bidders an indication of relative values for the different bid options, which will help them refine and feel more confident in their bidding decisions. This process of price discovery will be particularly helpful in the context of this first-time-ever incentive auction, in which there will be no historical results to guide bidder expectations. In contrast, a single round sealed-bid format would require bidders to make price commitments in advance of any information revealed through the auction process. Moreover, under a multiple round approach the bidder may never have to reveal its lowest acceptable price, unlike in a single round auction in which a bidder would indicate, at one time, the lowest prices at which it would accept various bid options.

316. Under the descending clock format, in each round a participating broadcaster will be presented a price for a bid option and will indicate whether it is willing to accept the option at that price. A bidder may see a price for more than one option, but whether a bidder can accept a price for more than one option at a time will be determined in the *Procedures PN.* Generally, each station will see a price that takes into account objective factors, such as location and potential for interference with other stations, that affect the availability of channels in the repacking process and, therefore, the value of a station's bid to voluntarily relinquish spectrum usage rights. Thus, a station with a high potential for interference will be offered a price that is higher than a station with less potential for interference to other stations. Setting prices in this manner will encourage stations with more interference potential to remain active in the reverse auction bidding longer, increasing the efficiency of the repacking process by reducing the likelihood that such stations will have to be assigned channels, thereby blocking other stations with less interference potential. This, in turn, will reduce the overall cost of clearing spectrum and increase the likelihood of a successful auction.

317. We will determine the factors to be used in setting prices in the *Procedures PN* based on additional, more focused public input. We will also determine in the *Procedures PN* the mechanism for applying such factors, and will consider, among other things, whether to utilize optimization techniques. We emphasize that we do not intend to set prices to reflect the potential market or enterprise value of stations, as opposed to their impact on the repacking process. Possible factors include the number of stations that a station would interfere with and block from being assigned channels, the population the station covers, or a combination of such factors. We must make all reasonable efforts to preserve the population served of protected stations that will remain on the air, making population served one of the major constraints on the availability of channels in the repacking process.

318. We are not persuaded that using such factors will deter broadcasters from participating in the reverse auction. No station will be compensated less than the total price that it indicates it is willing to accept. Thus, we also reject any suggestion that using such factors in setting price offers is contrary to the Spectrum Act.

319. Generally, the prices for bid options will start high and descend for each station, as long as the station's acceptance of a chosen bid option is not needed to meet the current spectrum clearing target. Each round will last for a pre-set period of time. The *Procedures PN* will address the timing of rounds and how price decrements will be determined after an opportunity for comment.

320. We will also provide participating broadcasters with the optional flexibility of ''intra-round bidding.'' With intra-round bidding, a bidder will be able to indicate the lowest price at which it is willing to accept an option. In addition to giving bidders more control over the bidding process, intra-round bidding will speed the pace of the reverse auction, consistent with our auction design goals, by allowing relatively large round-to-round reductions in prices, but also allowing bidders to identify the precise points at which they want to change bid options or drop out of the auction.

b. Bid Assignment Procedures: Determining Which Bids Are Accepted

321. Bid assignment procedures determine which stations receive payments in exchange for relinquishing rights. In addition to considering price information, the bid assignment procedures in the reverse auction must ensure that the stations that drop out of the bidding can feasibly be assigned channels in the repacking process. The *NPRM* identified two general approaches to bid assignment. The first approach, referred to as integer programming, would consider all the relevant information at once and try to find the optimal solution. Rather than considering all aspects of the problem at one time, the second option would use an iterative or ''sequential'' approach. Under the latter approach, when a station decides the price offered for a given bid option is too low and it wishes to drop out of the bidding for that option, the auction system would evaluate the impact of that station's decision, and would determine how assigning that station a channel in a band it considers acceptable would affect the feasibility of assigning channels to the stations that remain

active in the bidding at the current prices. Based on that evaluation, determinations would be made as to which bids to accept provisionally at the current prices.

322. The Order adopts bid assignment procedures that will evaluate the feasibility of assigning television channels to stations generally using a sequential approach. The sequential approach using a feasibility checker in each round can be run very quickly, which is important to the success of a descending clock auction format. The *Procedures PN* may incorporate some optimization methods into the sequential process after additional public comment, if doing so would improve performance of the feasibility checker and not unduly slow the reverse auction bidding process. Also, the repacking methodology will use an integer programming optimization process at various other points in the auction process.

323. Under the sequential approach, at each point in the bidding process at which a station drops out and must be assigned a channel in its home band, the repacking methodology will determine whether doing so precludes assigning a channel to any of the stations that remain active in the bidding. If so, the station for which no channel is available will be provisionally selected to receive a payment in exchange for relinquishing rights. Only stations that can still feasibly be assigned a channel in their home bands will remain active in the bidding as prices decline. The bidding rounds will continue until every station has dropped out of the bidding and been provisionally assigned a channel in its home band or has been selected to receive a payment to relinquish its rights because no feasible channel could be found for it in the reorganized band. At that point, final channel assignments will be established through the use of optimization techniques. The statutory mandate to ''make all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee'' will be incorporated into this feasibility analysis. *See* Spectrum Act § 6403(b)(2).

c. Procedures To Determine Payments

324. The *NPRM* addressed ways of determining the payments that broadcasters would receive in exchange for relinquishing rights under various bid options, including a methodology referred to as ''threshold'' pricing, which would determine the payment to a winning bidder based on the price at the point the repacking methodology determined that it could no longer find a feasible channel for the bidder's station in its home band because another station had dropped out of the bidding and had to be assigned a channel. The Order adopts threshold pricing to determine payments in the descending clock auction. Under this pricing approach, a bidder's payment for a relinquishment option generally will be based on the price for the option when another bidder—whose exit from the auction triggers acceptance of the winning bidder's bid, as described above—drops out of the bidding. This payment will be at least as high as the last price the winning bidder agreed to accept for the relinquishment option.

325. A threshold pricing approach will simplify bidding strategy and facilitate broadcaster participation. Under this approach, payments are based on the actions of competing bidders, discouraging bidders from strategically distorting their own bids in an effort to increase their payments. Instead, it encourages a straightforward bidding strategy, in which a bidder indicates that it is willing to accept a price as long as the price is at least as great as the value the bidder ascribes to the bid option. If the bidder drops out before the price reaches its value, the bidder may pass up an opportunity to relinquish rights at a profitable price. If the bidder continues to bid after the price passes its value, it may be selected as a winning bidder, but receive a payment below its value. Since a bidder's drop-out price determines the point at which it exits the auction, but not its payment amount if it wins, the bidder cannot gain by strategically distorting its drop-out price in order to affect its winning payment, as it might with a pay-as-bid approach. The general principle of basing payments on the drop-out behavior of competing bidders is frequently used in auctions because of the strong incentives the approach gives bidders to bid straightforwardly.

d. Additional Bidding Procedures

326. In addition to bid collection, bid assignment, and bid payment procedures, we adopt rules proposed in the *NPRM* for additional reverse auction bidding procedures. The *Procedures PN* will announce final decisions on the reverse auction bidding procedures, following further consideration of the record, including public input received in response to an additional opportunity for comment. Among the rules we adopt is a rule that provides for opening or reserve prices. Before any party applies to participate in the auction, the *Comment PN* will seek comment on the methodology for determining opening prices—the maximum amounts that will be offered to each potentially eligible broadcast licensee for each bidding option in the reverse auction—and the *Procedures PN* will announce this methodology.

327. We also could adopt a dynamic version of reserve prices, a variation on reserve prices that would set dynamic maximum prices based on bidding in the auction. Under this rule, the amounts offered will be calculated for each licensee based on specific factors that affect the value of its voluntary relinquishment of spectrum usage rights. Thereafter, a licensee interested in potentially exercising any of the bid options will file a pre-auction application to participate in the reverse auction. Qualified applicants for the reverse auction will then indicate, in the initialization step, the relinquishment options they would be willing to accept at the opening prices. Parties addressing opening and reserve prices generally express concern that prices be high enough to attract broadcaster participation, and these rules will facilitate the Commission's ability to do so. In particular, using dynamic reserve prices could address the risk that setting the opening prices too high will prevent the auction from repurposing spectrum by establishing a mechanism that will allow price offers to be reduced in non-competitive areas based on bids in other areas.

328. We also adopt a rule expressly providing that a bid in the reverse auction is an unconditional, irrevocable offer by the bidder to fulfill the terms of the bid. That is, a bidder that indicates it is willing to accept a price for a bid option is obligated to relinquish those rights at that price, if the bid is selected by the auction system as a winning bid. Such a provision is fundamental to the incentive auction process in order to ensure that broadcasters will bid truthfully in the reverse auction and to provide certainty to forward auction bidders. We decline to adopt opposing proposals that would allow reverse auction bidders to revoke bids after making them. Accordingly, a bidder will have a binding obligation to fulfill the terms of a winning bid.

C. Forward Auction

1. Pre-Auction Process

a. Competitive Bidding Authority

329. The Spectrum Act mandates that the Commission shall conduct a forward auction to assign licenses to authorize the use of repurposed spectrum as part of an incentive auction of broadcast television spectrum. *See* Spectrum Act § 6403(c)(1). The Spectrum Act did not revise section 309(j)(1) of the Communications Act, which requires

the Commission to use competitive bidding to assign licenses when ''mutually exclusive applications are accepted for any initial license,'' subject to the Commission's obligation in the public interest to avoid mutual exclusivity in application and licensing proceedings and subject to specified exemptions not applicable here. *See* 47 U.S.C. §§ 309(j)(1)–(2), (j)(6)(E).

330. In the *NPRM,* the Commission sought comment on how to apply the section 309(j)(1) requirement of mutual exclusivity in the context of the broadcast television spectrum forward auction. Inherent in the forward auction are a number of features that distinguish it from past spectrum license auctions. First, the Spectrum Act expressly ties the success of the reverse auction to generation of specified ''minimum proceeds'' from the forward auction. *See* Spectrum Act § 6403(c)(2). As a result, forward auction bids cannot be used to assign flexible-use wireless licenses unless the sum of all forward auction bids is sufficient to meet the costs and expenses identified by the Spectrum Act, as determined in part by the reverse auction. Second, at the outset of the reverse and forward auctions, there is a conflict between the current use of UHF band spectrum by reverse auction bidders (existing broadcast television licensees) and the future use of any portion of the spectrum by forward auction bidders (new flexible-use licensees), which only the conduct of both the reverse and the forward auctions can resolve. These interdependencies make it unclear at the outset of the forward auction exactly how many (if any) blocks of repurposed spectrum will ultimately be made available in any given market.

331. We interpret our competitive bidding authority under section 309(j)(1) in light of these features of the broadcast television spectrum incentive auction mandated by the Spectrum Act, and in a manner that is consistent with, and that will give full effect to, that mandate. Accordingly, we conclude that the Commission has authority in the section 6403 forward auction to conduct competitive bidding if it accepts any application(s) seeking to bid on initial 600 MHz flexible-use licenses, and any application(s) seeking to bid in the reverse auction. Our determination does not preclude finding other bases for our competitive bidding authority under section 309(j)(1). The Spectrum Act requires that ''at least two competing licensees participate in the reverse auction.'' *See* Spectrum Act § 6402. This additional requirement will be satisfied if more than one broadcast television licensee's pre-auction application is found to be complete and in compliance with the application rules, and if at least two such licensees are not commonly controlled. We reject the suggestion that more than one forward auction bidder must make a bid on specific available reallocated spectrum to satisfy section 309(j)(1) of the Communications Act. We conclude that our interpretation best accords with canons of statutory construction requiring that statutes be read in light of their purpose, and that normally the specific governs the general.

332. In section 6403, Congress directed in plain language that the Commission ''shall conduct a forward auction'' for spectrum reallocated from broadcast use. *See* Spectrum Act § 6403(c)(1). With respect to other frequency bands specifically subject to auction pursuant to the Spectrum Act, Congress referred more generally to the use of ''a system of competitive bidding under section 309(j).'' *See* Spectrum Act § 6103(a)(2). We need not address here how to apply section 309(j)(1) in other contexts, but the intention of Congress in section 6403 is clear. We also construe that mandate as reflecting a recognition of the special features of the incentive auction. These include the interdependence of the reverse and forward auctions and our resulting inability to make determinations at the outset about whether and in what markets requests for interchangeable channels exceed supply, due to the mutually exclusive uses of the spectrum presented by existing licensees and any parties licensed based on the forward auction; and the contingency of the success of the reverse auction on the proceeds to be derived from permitting the forward auction to proceed, making our acceptance of forward auction bids dependent on the sum of all forward auction bids. We thus also conclude that our interpretation of the statutory scheme is ''necessary to effectively implement'' the incentive auction mandate established by Congress. *See Benkelman Tel. Co.,* 220 F.3d 601, 605–06 (D.C. Cir. 2000).

b. Bidding Credits

333. The Commission proposed in the *NPRM* to adopt the same small business size standards for the forward auction component of the incentive auction as it adopted for the adjacent 700 MHz Band. The Commission also proposed to extend any rules and policies adopted in the spectrum over Tribal lands proceeding, including those related to Tribal land bidding credits, to any licenses that may be issued through competitive bidding in the forward auction.

334. Certain commenters requested that we modify our existing rules regarding bidding credits specifically for the incentive auction. As our designated entity rules include generally applicable provisions regarding size-based eligibility and corresponding bidding preference, we decline to adopt modifications specific to the incentive auction. Instead, we will initiate a separate proceeding to examine our designated entity (''DE'') program generally. Our goal is to resolve that DE proceeding early enough to allow all parties to account for any changes to the DE rules while planning for the incentive auction.

335. Pending the outcome of the DE proceeding, which will allow the Commission to develop a more complete record, we today adopt the same business size standards and associated bidding credits for small businesses as the Commission did for the 700 MHz Band. In the DE proceeding, we will revisit and consider changing these business size standards and bidding credits. Specifically, for the purpose of the forward auction, we will define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For the 600 MHz Band, small businesses will be provided with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, consistent with the standardized schedule in Part 1 of our rules. We adopt these size standards and associated bidding credits in light of the similarities with wireless licenses already assigned in the 700 MHz Band, based on the record established to date and our existing designated entity rules. Due to their proximity, these bands have similar propagation characteristics. In addition, the technical rules we adopt for the 600 MHz Band are based on the rules for 700 MHz spectrum, with specific additions or modifications designed to protect certain incumbent licensees and unlicensed users. In light of these similarities, licensees utilizing the 600 MHz Band may face issues and costs similar to licensees utilizing the 700 MHz Band, including issues and costs related to developing markets, technologies, and services. Accordingly, at this time it is appropriate to adopt the same size standards and associated bidding credits for the 600 MHz Band as the Commission adopted for the 700 MHz Band.

336. We set the revenue threshold (i.e., bidding credit eligibility) at $40

million for small businesses and $15 million for very small businesses, and we decline to adopt at this time additional tiers or larger bidding credits than those proposed in the *NPRM.* Commenters in this proceeding have not presented specific and data supported grounds to warrant adopting for the 600 MHz Band additional tiers or larger bidding credits than those adopted for the 700 MHz Band. As with licenses offered recently in AWS and the 700 MHz Band, a significant number of licenses offered in the forward auction will be for small geographic areas and will provide small businesses with ample opportunities to win licenses with the two bidding credits (i.e., 15 percent and 25 percent) we adopt in the Order. Due to the similar physical characteristics and similar regulatory treatment of the 600 MHz and 700 MHz Bands, we expect the capital requirements for services in the 600 MHz Band to be very similar to those for 700 MHz services.

337. We also decline to adopt at this time proposals to adopt a scale of bidding credits for the 600 MHz Band based on an entity's spectrum holdings in a particular geographic area in lieu of credits based on small business size. These proposals fundamentally involve issues of spectrum aggregation policy because the commenters advocate them to achieve the same purposes as the Commission traditionally has sought to achieve through spectrum aggregation policies. Spectrum aggregation issues are addressed in a separate proceeding.

338. We also decline to adopt at this time new rural bidding credits for the 600 MHz Band in addition to the small bidding credits for the 600 MHz Band. The record in this proceeding does not provide a sufficient basis to revisit prior determinations on this subject matter. Further, the record does not support at this time adopting new bidding credits based on past service to rural areas.

339. Further, we decline to issue a Further NPRM in this proceeding regarding an Overcoming Disadvantages Preference, as one commenter requests. As part of the DE proceeding, the Commission will likely consider whether any revisions made to the designated entity rules, including any preference for overcoming disadvantages, should apply to auctions, including the broadcast television spectrum incentive auction.

340. We decline proposals by commenters to act in this proceeding to modify or eliminate the attributable material relationship (''AMR'') rule, in the Order. We expect to generally re-examine the AMR rule, as well as other potential changes to the designated entity program, as part of the DE proceeding. In light of that proceeding, and limited record support applicable solely to the 600 MHz Band, we therefore decline to modify the AMR rule at this time. In the DE proceeding we will seek comment on how any revisions to the designated entity rules should apply to the incentive auction.

341. Finally, we adopt the *NPRM* proposal to extend any rules and policies adopted in the spectrum over Tribal lands proceeding, including those related to Tribal land bidding credits, to any licenses that may be issued through competitive bidding in the forward auction. Thus, we defer the application of any rules and policies for facilitating access to spectrum and the provision of service to Tribal lands to the Tribal lands proceeding. Because that proceeding is specifically focused on promoting greater use of spectrum over Tribal lands, it is better suited than the instant proceeding to reach conclusions on that issue.

c. Prohibition of Certain Communications

342. In the *NPRM,* the Commission sought comment on how to determine which parties are ''competing'' in the forward auction for the purposes of enforcing the existing communications prohibition, whether to prohibit reverse auction applicants from communicating with forward auction applicants regarding the substance of their bids or bidding strategies, and whether the prohibition should apply to communications with all broadcast television licensees as opposed to only those licensees that submit applications to participate in the reverse auction.

343. The Order applies to forward auction applicants the Commission's existing Part 1 rule prohibiting certain communications. Under this rule, after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application, subject to certain specified exceptions. Two forward auction applicants are ''competing'' for the purposes of this prohibition if they apply for licenses in any of the same geographic license areas, regardless of whether the licenses are for specific frequencies or generic blocks. Thus, this prohibition applies only to forward auction applicants that apply for licenses in the same geographic license area, and not to those that apply only in different geographic license areas.

344. In addition, beginning on the short-form application filing deadline for the forward auction and until the results of the incentive auction have been announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any covered television licensee, comprising generally all broadcast television licensees that are or could become eligible to participate in the reverse auction and all channel sharers. Applying the prohibition across the reverse and forward auctions will promote a fair and competitive auction. This restriction will inhibit the ability of forward auction applicants and covered television licensees to form side agreements, which could have anticompetitive effects and could alter the outcome of the incentive auction.

345. Under this restriction, forward auction applicants are prohibited from communicating with all covered television licensees regarding incentive auction applicants' bids and bidding strategies, not just those broadcast television licensees that actually apply to participate in the reverse auction. Given the Commission's statutory obligation to protect the identities of reverse auction participants, it is not practicable to limit the prohibition to communications with reverse auction applicants because doing so would require disclosing the identities of those reverse auction applicants to the forward auction applicants. This prohibition restricting communications across the reverse and forward auctions is not limited by geographic area. Given that the results of the reverse auction for one participant may have effects across multiple geographic areas, it is appropriate to prohibit forward auction applicants from communicating prohibited information to any covered television licensee, regardless of the broadcast television licensee's geographic location.

346. We adopt one exception to the rule prohibiting forward auction applicants from communicating with any covered television licensee regarding incentive auction applicants' bids or bidding strategies. In recognition of the practical realities of business ownership and management and to allow strategic coordination within a single enterprise during the incentive auction, if a controlling interest,

director, officer, or holder of any 10 percent or greater ownership interest in a forward auction applicant is also a controlling interest, director, officer, or governing board member of a covered television licensee, the forward auction applicant and the covered television licensee may communicate with each other regarding incentive auction applicants' bids and bidding strategies without violating the prohibition. Controlling interests include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. As with respect to the reverse auction, this exception for overlapping interests only applies to controlling interests, directors, officers, and governing board members of a covered television licensee as of the deadline for submitting applications to participate in the reverse auction, and it only applies to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in a forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction. We emphasize that this exception applies only to a forward auction applicant's discussions with a covered television licensee, and does not apply to a forward auction applicant's discussions with a competing forward auction applicant. Additionally, the prohibition across the reverse and forward auctions applies as of the deadline for submitting short-form applications to participate in the forward auction, and applies to any additional included parties at any subsequent point prior to when the prohibition ends. Thus, if, for example, a forward auction applicant appoints a new officer after the short-form application deadline, that new officer would be subject to the prohibition, but would not be included within this exception.

347. We decline to adopt a general exception allowing forward auction applicants to communicate with covered television licensees regarding incentive auction applicants' bids and bidding strategies so long as agreements between the relevant parties are disclosed to the Commission.

348. For the purposes of the new rule that we adopt here, we will apply the same definition of forward auction ''applicant'' that applies to the rule for spectrum license auctions generally, and that will apply to communications between forward auction applicants. *See* 47 CFR 1.2105(c)(7)(i). That definition provides that the term ''applicant'' includes all controlling interests in the entity submitting the short-form application, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity, and all officers and directors of the entity. We decline to amend the definition of ''applicant'' so that the prohibition would apply only to controlling equity interest holders, as opposed to 10 percent interest holders. Ten percent interest holders may easily become conduits of information, and as a result, we will continue to apply the prophylactic prohibition of certain communications to such interest holders in order to prevent anticompetitive communications.

349. Consistent with the approach we have taken in spectrum license auctions generally, forward auction applicants may continue to communicate with covered television licensees and competing forward auction applicants regarding matters wholly unrelated to the incentive auction. We rely on existing precedent regarding the types of communications that rise to the level of prohibited communications under the rules. We emphasize that the rules prohibiting certain communications are limited in scope and only prohibit disclosure of information that affects, or has the potential to affect, bids and bidding strategies. Forward auction applicants may structure their auction participation as needed to avoid violating the rules, such as by instituting internal controls with respect to information about bids and bidding strategies. For instance, although it would not outweigh specific evidence of prohibited communications, a forward auction applicant could reduce the possibility of a violation by preventing employees with information about bids and bidding strategies from communicating such information to other employees who are engaging in unrelated negotiations with competing forward auction applicants or with covered television licensees.

350. The new rules prohibiting certain communications across the reverse and forward auctions apply until the results of the incentive auction have been announced by public notice. Allowing communications between forward auction applicants and covered television licensees after the announcement of auction results will facilitate the UHF band transition. The existing Part 1 rule prohibiting certain communications between competing forward auction applicants applies until after the down payment deadline. Applying the prohibition to communications between forward auction applicants for the limited additional time period from the effective date until after the down payment deadline will protect the outcome of the auction and will impose only a minimum additional burden on forward auction applicants.

351. Any party that makes or receives a prohibited communication regarding bids or bidding strategies shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. *See* 47 CFR 1.2105(c)(6). A failure to make a timely report constitutes a continuing violation. Parties must adhere to any applicable antitrust laws, including any additional communications restrictions. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to DOJ for investigation. Parties who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their upfront payment, down payment, or full bid amount and revocation of their license(s), and may be prohibited from participating in future auctions.

d. National Security Certification

352. In accordance with the *NPRM,* we revise the recently adopted national security certification to extend its applicability to auctions ''in which any spectrum usage rights for which licenses are being assigned were made available under [47 U.S.C. § 309(j)(8)(G)(i)].'' *See* Spectrum Act § 6004(b)(2). As the Commission will conduct the forward auction under its general competitive bidding rules and the forward auction is subject to the national security restriction in section 6004 of the Spectrum Act, forward auction applicants must certify as to their compliance with the national security restriction in 47 CFR 1.2105(a), as amended. As with other required certifications, a forward auction applicant that fails to certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the short-form application are not ''person[s] who [have] been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant'' by the applicable filing deadline would render its short-form application unacceptable for filing, and its application would be dismissed with prejudice. *See* Spectrum Act § 6004.

2. Bidding Process

a. Bid Collection Procedures: Auction Format, Generic License Categories, Etc.

353. The *NPRM* proposed to collect bids using one of two multiple round auction format options: A simultaneous multiple round (''SMR'') ascending auction, which typically has been used for spectrum license auctions, or an ascending clock auction. Under the clock auction format, the auction system would announce a price for the licenses in each category within a geographic area and a bidder would indicate the number of licenses it was interested in at that price in that category. In a clock auction, the Commission proposed to permit intra-round bidding, in which a bidder could indicate a specific price at which its demand for licenses in a category would change, instead of simply accepting or rejecting the clock price. The Commission also asked about providing for package bidding, which would allow bidders to bid on all-or-nothing packages of licenses. The Commission noted that extended bidding could be implemented if proceeds were insufficient to meet the requirements to close the auction.

354. Noting that auction design has evolved since the existing Part 1 rules for competitive bidding with respect to spectrum licenses were adopted, the Commission also proposed to revise the rules, in part to provide explicitly for auction procedures directly addressing bid collection.

355. For the forward auction, in the Order we adopt an ascending clock auction to collect bids for categories of generic licenses, to be followed by a separate assignment mechanism to assign frequency-specific licenses. In referring to ''generic licenses'' we are not referring to the actual licenses that will be assigned to winning bidders, but to standardized blocks of spectrum that will be sued to represent quantities of licenses for a time during the bidding process. We also adopt the proposal for extended round bidding under certain circumstances. In addition, we adopt the proposed Part 1 rule revision with respect to bid collection procedures to update our rules and create a consistent framework for addressing these procedures in reverse and forward auctions. The bid collection procedures we adopt for the forward auction are not inconsistent with the Commission's existing competitive bidding rules. We find, however, that the revised rules provide greater clarity with respect to the options likely to be used. For example, as revised in this proceeding, 47 CFR 1.2103(b)(1)(ii) expressly provides for procedures allowing for, among other things, bids for a number of generic items in one or more categories of items. We make a corresponding revision expressly providing that an application may identify categories of licenses on which the applicant wishes to bid.

356. Because the components of the auction are interrelated, a more expeditious forward auction benefits reverse auction bidders as well as forward auction bidders, and lowers participation costs for all. Conducting bidding for generic licenses has the potential to significantly speed up the clock rounds of the forward auction bidding process, since bidders will not need to bid iteratively across rounds on several substitutable license blocks, as they would if they were bidding for frequency-specific licenses. The clock auction format we adopt easily incorporates bidding for categories of generic licenses, and because it has multiple rounds, will allow bidders to observe changes in relative prices for different types of licenses and across different geographic areas, and to adjust their bidding strategies accordingly.

357. Although commenters generally support bidding for generic licenses, some caution that the blocks of spectrum within a license category must be truly fungible, or at least sufficiently similar. While we agree that it is important for licenses in a category to be similar, they need not be entirely interchangeable, as the assignment round will take into account specific bidder preferences for licenses within a category. We recognize that we may need to consider a number of factors, such as proximity to television stations or guard bands, in order to define whether particular licenses are ''similar enough'' to be included in a single bidding category. During the pre-auction process, in response to the *Comment PN,* potential bidders will be able to provide input on specific standards for categories of generic licenses.

358. The ascending clock auction format will proceed in a series of rounds, with bidding being conducted simultaneously for all licenses available in the auction. Section 1.2103(b)(1)(i), as revised in this proceeding, provides for collecting bids in a single round or in multiple rounds. The initial price for generic licenses in a category and geographic area will be the minimum opening bid. Hence, in the initial round, a bidder will indicate how many generic licenses in a category in an area it demands at the minimum opening bid price. Bidding rounds will be open for predetermined periods of time, during which bidders will indicate their demands for licenses at the clock prices associated with the current round. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction. Activity and eligibility rules, as with other detailed procedures and mechanisms, will be established in the *Procedures PN.*

359. In each geographic area, the clock price for a license category will increase from round to round if bidders indicate total demand that exceeds the number of licenses available in the category. The clock rounds will continue until, for all categories of licenses in all geographic areas, the number of licenses demanded does not exceed the supply of available licenses. At that point, those bidders indicating demand for a license in a category at the final clock price will be deemed winning bidders, contingent upon the incentive auction process closing after the current stage of the forward auction. In the context of the forward auction, we use the term ''provisional winner'' to indicate that winning bid status depends upon the final stage rule of the incentive auction being satisfied. The clock auction will not assign explicit provisionally winning bid status, as in an SMR auction, to indicate a standing high bid.

360. We will incorporate intra-round bidding into the ascending clock auction. Intra-round bidding will allow a bidder not willing to accept the next round's clock price to indicate a point between the previous round's price and the next clock price at which its demand for licenses in the category changes. Intra-round bidding will allow the auction to proceed more quickly, by making it possible to use relatively large clock price increments without running the risk that a large jump in price will overshoot bidders' demands for licenses in a category.

361. We do not intend to incorporate package bidding procedures into the forward auction because of the additional complexity that package bidding would introduce into the auction. Package bidding procedures would permit bidding on all-or-nothing groups of licenses as well as on individual items within those groups. The forward auction will offer multiple blocks of licenses in multiple categories in many hundreds of geographic areas. To permit bidders to bid on combinations of those licenses would considerably complicate the bidding process and the procedures to determine clock prices and winning bids and it could bring unnecessary complexity into an already complex auction.

362. An alternative to package bidding on which the *Comment PN* will

seek input may strike a compromise between the larger carriers' interests in ensuring a minimum scale of operations in urban areas and smaller bidders' interests in smaller markets. Under this alternative, the Commission would create an aggregation of the largest PEA licenses. A bidder could indicate interest in the aggregated PEAs or in individual PEAs not included in the aggregation. Unlike package bidding formats that would give a bidder the option of placing an all-or-nothing package bid on a group of licenses or bidding separately on the licenses comprising the package, bids would not be accepted for the individual PEAs included in the aggregation of PEAs.

363. Section 1.2103(b)(1)(v), as revised in this proceeding, provides for collecting bids in any needed additional stage or stages following an initial single or multiple round auction, such as an extended bidding round or an assignment stage for generic items. We may conduct an extended round of bidding after the clock bidding rounds to increase the likelihood that the auction will conclude at the end of the current stage, thereby avoiding the need to move to another stage in which less spectrum would be available for licensing in the forward auction. If, at the end of the clock bidding rounds, the proceeds raised are insufficient to satisfy the final stage rule, but are within some range of the required amount, an extended bidding round would allow the provisionally winning bidders to indicate willingness to accept higher prices to close the gap. The specific circumstances, including the range of proceeds, that will trigger an extended bidding round will be discussed in more detail and established in the pre-auction process. Any such subsequent bidding will not by itself change the set of provisional license winners.

b. Bid Assignment Procedures: Determining Winning Bidders and Assigning Frequency-Specific Licenses

364. The Commission proposed in the *NPRM* to revise its existing rules, in part, to provide explicitly for auction procedures directly addressing bid assignment procedures. In the Order we adopt a two-step assignment procedure for the forward auction: The clock rounds will first determine that a bidder will win one or more generic licenses in a category, and an assignment mechanism subsequently will determine specific frequency assignments. This two-step process will give bidders the benefits of price discovery in the clock rounds, permitting them to shift bidding strategies as the relative prices of different categories of licenses change, while still realizing the speed advantages of bidding for generic licenses. Knowing that the assignment mechanism will enable them to express preferences for frequency-specific licenses, bidders will be able to bid more confidently for generic licenses in the clock rounds. We also revise the Part 1 rule concerning bid assignment procedures to create a consistent framework for addressing these procedures in the reverse and forward auctions. The assignment procedures likely to be used in the forward auction are consistent with the Commission's existing competitive bidding rule. We find, however, that the revised rule provides greater clarity with respect to the options likely to be used. For example, as revised in this proceeding, 47 CFR 1.2103(b)(2) expressly authorizes an auction in which the assignment of winning bids is based on a variety of factors in addition to the submitted bid amount, including but not limited to bids submitted in a separate competitive bidding process, such as an auction to establish incentive payments for the relinquishment of spectrum usage rights—i.e., the reverse auction.

365. During the first step of the assignment procedure, the clock rounds will end in a stage with bidders winning generic licenses in each category of licenses in each geographic area, contingent on the final stage rule being satisfied. If the final stage rule is satisfied, the second step of the assignment procedure will assign specific frequencies to the winning bidders through the special assignment mechanism. If the rule is not satisfied in a stage of the forward auction, then the special assignment mechanism will not be run in that stage.

366. The assignment mechanism will consist of a single bidding round, or a series of separate bidding rounds, in which bidders will bid for priority in selecting bands or for a preferred frequency within a geographic area. The winning clock price could include a payment determined in an extended round of bidding. The frequency preferences of the bidders willing to pay the highest premiums will be honored, to the extent technically possible. The payment rule for the assignment round will be determined in the *Procedures PN.*

367. The use of a competitive bidding round will give bidders an opportunity to indicate their preferences for specific frequencies, facilitating the assignment of specific frequencies to the highest-valuing users. Although suggested by several commenters, an administrative, random, or quasi-random assignment process would not have this advantage of taking users' particular preferences into account and thus may undermine the efficiency of the ultimate license assignments. We therefore decline to adopt those proposals.

c. Procedures To Determine Payments

368. In the *NPRM,* the Commission proposed to revise the existing Part 1 competitive bidding rules to provide explicitly for procedures to determine payments through the extended and assignment rounds.

369. In the Order we determine that the final prices winning bidders in the forward auction will pay for spectrum licenses will be based on the final clock prices for generic licenses, modified by any additional payments determined in an extended round aimed at satisfying the final stage rule and in the assignment round to assign frequency-specific licenses. The assignment round will serve important auction goals by allowing bidding on generic licenses during the clock rounds, thereby expediting the forward auction bidding process. Likewise, the extended bidding round may help to expedite the incentive auction by giving forward auction bidders the opportunity to satisfy the final stage rule and thereby avoid the need to run another stage of the auction.

370. We also revise the Commission's Part 1 rules governing payment determination procedures. Although the procedures in the forward auction will be consistent with the existing competitive bidding rule, 47 CFR 1.2103(b)(3), as revised in this proceeding, highlights the need for auction design to address payment rules and does so in terms that can be used consistently across Commission competitive bidding, including the forward auction component of incentive auctions and standard spectrum license auctions.

d. Additional Bidding Procedures

371. As noted in the *NPRM,* the Commission's existing Part 1 competitive bidding rules include, in addition to provisions regarding bid collection, bid assignment, and bid payment procedures, additional competitive bidding mechanisms for sequencing or grouping licenses offered; reserve prices, minimum opening bids and minimum or maximum bid increments; stopping or activity rules; and payments in the event of bid withdrawal, default, or disqualification. Noting that the rules did not exhaustively list all potential bidding mechanisms, the Commission proposed

to revise the list of options set forth in section 1.2103. It further proposed to revise its rules for stopping an auction to permit it to terminate multiple round auctions within a reasonable time and in accordance with the goals, statutory requirements, and rules for the incentive auction, including the reserve price or prices.

372. In the Order we adopt the proposal to revise the Commission's competitive bidding rules with respect to auction design options and competitive bidding mechanisms. The Order makes clarifying edits to the text of the proposed rules set forth in the *NPRM* without changing their substance. We also change the rule regarding the contents of applications to participate in the forward auction regarding the identification of categories of licenses on which the applicant wishes to bid and with respect to certifications the application must include. Likewise, we modify the language of the rule regarding upfront payments so that it can be applied to circumstances in which an applicant identifies categories of licenses on which it wishes to bid rather than particular licenses, we move language regarding bid apportionment previously contained in 47 CFR 1.2103 to 1.2104, and we update cross-references contained in other sections as needed. These revisions are essential to assuring consistency in the framework for the reverse and forward auctions.

373. Many of the auction procedures and mechanisms addressed in the revised rules will be the subject of more fully informed discussion during the upcoming pre-auction process. The Commission's rules provide for the applicable procedures to be finalized in the pre-auction process, including procedures for bid withdrawal, procedures for modifying bids during the auction, and potential liabilities for bid withdrawal.

3. Deletion of Outdated 1.2102(c)

374. In the *NPRM,* the Commission proposed deleting 47 CFR 1.2102(c), a list specifically exempting from competitive bidding identified services, such as UHF Television. Footnote 423 of the *NPRM* should have read ''propose to delete,'' rather than ''delete'' given the procedural context. Further, given the statutory limitations on competitive bidding, the footnote should have noted that ''the services'' listed in 47 CFR 1.2102(c) ''are subject to competitive bidding'' and exceptions therefrom ''under current law.''

375. In the Order, we delete 47 CFR 1.2102(c), which was adopted prior to the Balanced Budget Act of 1997, mandating the use of competitive bidding in circumstances where it was previously discretionary, while also adopting specified exemptions from that mandate. The Commission codified the statute's current categorical exemption in 47 CFR 1.2102(b). One commenter contends that the proposed deletion would subject Part 90 Private Land Mobile services to competitive bidding notwithstanding the exemption from competitive bidding provided by the Communications Act, specifically section 309(j)(2). *See* 47 U.S.C. § 309(j)(2). However, that argument overlooks the fact that 47 CFR 1.2102(b) separately codifies the protections afforded under section 309(j)(2) of the Communications Act. Thus, the proposed deletion would not change the extent to which the Part 90 licensees are subject to competitive bidding. Instead, it simply brings the Commission's rules into accord with the statute. Another commenter expresses concern about the effect on the exemption from competitive bidding of Personal Radio Services under Part 95 if 47 CFR 1.2102(c)(8) is deleted. However, since 47 CFR 1.2102(c) has been superseded by revisions to sections 309(j)(1) and (2) of the Communications Act, the deletion of 47 CFR 1.2102(c) will not change the extent to which services, including Part 95 Personal Radio Services, are subject to competitive bidding under the current statute.

IV. The Post–Incentive Auction Transition

A. Auction Completion and Effective Date of the Repacking Process

376. The Spectrum Act directs that no reassignments or reallocations may become effective until the completion of the reverse auction and the forward auction. *See* Spectrum Act § 6403(f)(2). In addition, no reassignments or reallocations of broadcast television spectrum may become effective unless the proceeds of the forward auction exceed the sum specified in Spectrum Act § 6403(c)(2). After the reverse and forward auctions are ''complet[e],'' the ''effective'' date of any spectrum reassignments and reallocations signals the end of the statutory confidentiality requirement for reverse auction participants, as well as the beginning of the Commission's authority to borrow up to $1 billion from the U.S. Treasury to accelerate relocation payments to broadcasters and MVPDs for repacking expenses. *See* Spectrum Act §§ 6403(f)(2), (a)(3), (d)(3). In addition, the FCC must make any relocation reimbursements from the TV Broadcaster Relocation Fund (''Reimbursement Fund'') within three years of the completion of the forward auction. *See* Spectrum Act §§ 6403(b)(4)(D), (d)(4).

377. In the Order we adopt the proposal from the *NPRM* that the reverse and forward auctions will each be ''complete'' within the meaning of the Spectrum Act when a public notice announces that each auction, respectively, has ended. In addition, the reassignments and reallocations will be ''effective'' for purposes of the statute when the Media and Wireless Bureaus release the *Channel Reassignment PN* specifying the new channel assignments and technical parameters of any stations that are assigned new channels in the repacking process or that become winning bidders in the reverse auction to change channels. This approach is consistent with the common meaning of the terms complete and effective, with the typical practice of issuing a public notice announcing the results of each auction as soon as the results have been finalized, and with the practical requirements of the UHF band transition. We anticipate that the public announcements regarding completion of the reverse auction, completion of the forward auction, and the effective date of the reassignments and reallocations will occur simultaneously and may be combined in one public notice, if practicable.

378. We decline to adopt broadcasters' suggestion to delay the completion of the forward auction until after broadcast stations reassigned to new channels in the repacking process file applications for construction permits to change channels and forward auction licenses have been issued. Broadcasters assert that this approach would allow them more time to finish relocating before the end of the three-year deadline for collecting relocation reimbursements from the Reimbursement Fund. Although we recognize that the three-year deadline for reimbursements will be challenging, the rules that we adopt today for administration of the Reimbursement Fund, which provide for payments to broadcasters and MVPDs based on their estimated costs, will help to ameliorate concerns about that deadline. Moreover, we conclude that the term ''completion,'' used in section 6403(b)(4)(D) in the context of conducting the forward auction, cannot reasonably be interpreted to refer to when repacked broadcasters file construction permit applications.

379. The approach suggested by broadcasters also would have a number of negative consequences for the UHF band transition. The Spectrum Act

directs that no reassignments or reallocations may become effective until the completion of the reverse auction and the forward auction, so we would have to require broadcasters to file applications for construction permits to change channels before the reassignments and reallocations become effective, injecting uncertainty into the UHF band transition. In addition, delaying the effective date would delay the Commission's ability to borrow $1 billion from the U.S. Treasury to expedite the reimbursement process. We do not believe that Congress intended to delay the Commission's access to the $1 billion loan because the very purpose of the loan is to expedite the availability of relocation funds. Further, delaying the effective date would prolong the statutory requirement that the Commission protect the confidentiality of the identities of reverse auction participants, thereby delaying the Commission's ability to release publicly the identities of the winning reverse auction bidders—a necessary prerequisite to the release of the channel reassignment information that broadcasters will need in order to file their applications for construction permits.

B. Processing of Bid Payments

380. In accordance with section 309(j)(8)(G)(i) of the Communications Act, the Commission will share with successful bidders that voluntarily relinquish licensed spectrum usage rights a portion of the forward auction proceeds ''based on the value of [their] relinquished rights as determined in [a] reverse auction.'' Section 6403(c) of the Spectrum Act provides that the amount of the proceeds that the Commission will share with a broadcast television licensee will not be less than the amount of the licensee's winning bid in the reverse auction. The Commission proposed in the *NPRM* to incorporate these statutory requirements into the competitive bidding rules for the reverse auction and sought comment on timing and procedures for auction proceeds disbursements.

381. The Commission must disburse winning bid payments by forward auction participants in compliance with statutory requirements. We will determine whether the final stage rule for the incentive auction is satisfied and reallocations and reassignments may proceed based on the winning bids in the forward auction. Payments that bidders then make to honor those bids must be distributed, specifically to fund: (1) Payments to broadcasters relinquishing spectrum usage rights; (2) specified FCC administrative costs; (3) relocation costs to be funded through the Reimbursement Fund; and (4) the Public Safety Trust Fund (''PSTF''). *See* Spectrum Act §§ 6402, 6403(c)(2). The Spectrum Act does not specify a timetable for the distribution of auction proceeds, though it specifies some deadlines before which particular distributions must occur. *See generally* Spectrum Act § 6402; *see also id.* § 6403(d)(4).

382. One of the conditions of the final stage rule is that sufficient proceeds are recovered to meet statutory minimum requirements plus any amount necessary to fund the PSTF for FirstNet. We note that auction proceeds are comprised only of the payments of winning bids for spectrum licenses by participants in the forward auction. Upfront or pre-auction deposits or payments are applied toward liabilities incurred in the auction, returned to unsuccessful bidders, or applied toward the amount of winning bids and, therefore, do not provide a separate component of auction proceeds. *See* 47 U.S.C. § 309(j)(8)(C); 47 CFR 1.2106(d), (e).

383. We will share auction proceeds with broadcasters relinquishing spectrum usage rights as soon as practicable following the successful conclusion of the incentive auction, as suggested by several wireless carriers and trade groups. However, we will not adopt a rigid deadline for disbursing those proceeds. In all spectrum license auctions, the Commission disburses auction proceeds only after spectrum licenses associated with winning bids have been granted, absent express statutory direction to do otherwise. That is, only after the Commission grants a spectrum license to a winning bidder does the Commission disburse any payments made in connection with the license to the FCC's administrative account or to the Treasury. The Commission does not disburse the upfront or down payments from winning bidders who default on their post-auction obligations prior to the issuance of their licenses. Furthermore, the Commission has granted spectrum licenses post-auction on a rolling basis, as license applications filed by winning bidders are ready to be granted. Any single application may cover up to all of the licenses won by the applicant and the associated winning bids may be in any amount, i.e., there is no fixed correlation between the number of applications and the number of licenses granted or the amount of related payments. Thus, amounts become available for distribution on a rolling basis over time and at intervals tied to the licensing process. Given these facts, a specific deadline for sharing proceeds is not feasible.

384. The Spectrum Act does not permit us to make reimbursement payments to relocated broadcasters before completion of the forward auction using funds collected as down payments from bidders in the forward auction, as suggested by one commenter. Section 6403(b)(4)(A) of the Spectrum Act directs the Commission to reimburse broadcasters ''from amounts made available under [section 6403(d)(2)],'' which includes two categories of ''amounts'': (1) ''[a]ny amounts borrowed under [section 6403(d)(3)(A)],'' and (2) ''any amounts in the [Reimbursement Fund] that are not necessary for reimbursement of the general fund of the Treasury for such borrowed amounts.'' Neither source of funding will be available to the Commission until the forward auction is complete. With regard to the first category, under section 6403(d)(3)(A), the Commission has no borrowing authority until ''the date when any reassignments or reallocations under [section 6403(b)(1)(B)] become effective, as provided in [section 6403(f)(2)].'' Section 6403(f)(2) in turn provides that ''no reassignments or reallocations under [section 6403(b)(1)(B)] shall become effective until the completion of the reverse auction . . . and the forward auction.'' Thus, the statute prohibits reimbursements from the first category prior to the completion of the forward auction. With regard to the second category, there will be no auction proceeds to be deposited in the Reimbursement Fund prior to completion of the forward auction. The Spectrum Act provides that deposits and upfront payments from ''successful bidders'' constitute auction proceeds, but such ''successful bidders'' will not exist prior to the completion of the forward auction. *See* Spectrum Act § 6402. *Cf.* 47 U.S.C. § 309(j)(8)(C)(ii). Therefore, we do not have authority under the Spectrum Act to issue reimbursement payments to relocated broadcasters prior to the completion of the forward auction.

385. We are committed to disbursing auction proceeds as promptly as possible while meeting all of our statutory responsibilities. We do not interpret the Spectrum Act to require or prohibit prioritizing any particular initial distributions of auction proceeds over others. We note, however, that payments deposited in the Reimbursement Fund must repay any Treasury loan before funding additional relocation reimbursements. *See* Spectrum Act § 6403(d)(2). We expect that payments to broadcasters

relinquishing spectrum usage rights will be among the first disbursements once amounts become available for distribution. This approach addresses one commenter's contention that broadcasters should not bear financial risks stemming from any forward auction licensing delays or forward auction bidder defaults.

386. With respect to relevant procedural matters, we also adopt the Commission's proposed rule incorporating the statutory requirements in section 309(j)(8)(G)(i) of the Communications Act and section 6403(c) of the Spectrum Act concerning incentive payments into our competitive bidding rules. In addition, we adopt the Commission's proposal to require successful bidders in the reverse auction to submit additional information to facilitate incentive payments. We note that the Commission's existing Part 1 competitive bidding rules will govern the post-forward auction process, including the submission of bid payments and long-form applications. *See* 47 CFR 1.2107. Specific details concerning forward auction bid payments and long-form filing requirements, including related deadlines, will be set forth in a public notice.

387. As mentioned in the *NPRM,* we envision that the information would be submitted on standardized incentive payment forms similar to the Automated Clearing House (''ACH'') forms unsuccessful bidders in typical spectrum license auctions use to request refunds of their deposits and upfront payments. This information collection is necessary to facilitate incentive payments and should not be burdensome to successful bidders. Specifically, without further instruction and bank account information from successful bidders, the Commission would not know where to send the incentive payments. The Commission intends to follow winning reverse auction bidders' payment instructions as set forth on their respective standardized incentive payment forms to the extent permitted by applicable law.

388. We will disburse payments to the licensee that is the reverse auction applicant when sharing proceeds from the auction. This approach will ensure that the person who legally holds the license receives forward auction proceeds in return for relinquishing spectrum usage rights. This decision is consistent with the Spectrum Act, which repeatedly refers to sharing forward auction proceeds with licensees.

389. The Commission did not receive comments directly addressing whether to modify its red light procedures in connection with the incentive auction. As a result, we are not modifying those procedures at this time.

C. Transition Procedures for Television Stations and Reimbursement Procedures for Television Stations and MVPDs

390. Implementing the results of the incentive auction will be a complex and challenging undertaking for broadcasters. No broadcaster will be required to change the location of its transmission facility, but operation on a new channel will require modifications to existing facilities, ranging from relatively minor adjustments to more substantial changes depending on various factors. After the auction concludes and the results of the repacking process are announced, stations changing channels must be able to transition to their new channels in a manner that will minimize disruption to their viewers as well as other stations, wireless operators, and multichannel video programming distributors (MVPDs). In addition, the Spectrum Act specifies that reimbursements from the Fund must occur within three years of the completion of the forward auction, and this finite period necessitates a prompt and efficient reimbursement process.

1. License Modification Procedures

a. Construction Permit Application Filing Requirements

391. The Commission will modify the licenses of stations assigned new channels in the reverse auction or repacking process pursuant to Section 316 of the Communications Act and Section 6403(h) of the Spectrum Act. It will not use a codified Table of Allotments or rulemaking procedures to implement post-auction channel changes, and will classify construction permit applications for post-auction channels as minor changes. Unlike major change applications, minor change applications are not subject to local public notice requirements or a 30-day petition to deny filing window. The Commission delegates authority to the Media and Wireless Telecommunications Bureaus to release the *Channel Reassignment PN* upon the conclusion of the auction specifying the new channel assignments and technical parameters of any stations that are assigned new channels in the repacking process or that submit winning bids to change channels in the reverse auction. Stations that are reassigned in the repacking process or that submit winning UHF-to-VHF or high-VHF-to-low-VHF bids will be required to file minor change applications for construction permits using FCC Form 301, 301–CA, or 340. These initial minor change applications for construction permits, including applications that propose alternative transmission facilities, will be exempt from filing fees. *See* 47 CFR 1.1116(a). However, an applicant requesting any additional modification will be subject to the appropriate fee. After the Commission completes the repacking and channel substitution process, the Media Bureau will resume using the current rulemaking process to make new channel allotments and will a proceeding to amend Section 73.622 of the rules to reflect all new full power channel assignments in a revised Table.

392. Issues that would be considered through the use of rulemaking and major change application procedures, such as preservation of service to existing viewers and compliance with interference and other technical rules, will be addressed through the repacking methodology used to generate new channel assignments. Use of a rulemaking process also would be burdensome, cause delays, and would be inconsistent with the goal of expeditiously implementing the results of the auction and repacking process. The use of minor change applications will help facilitate an expeditious post-auction transition because they can be processed more quickly than major changes.

393. Stations will be required to file minor change applications during a three-month filing window that will begin upon the release of the *Channel Reassignment PN.* This filing deadline will apply to all stations that are reassigned to a new channel in the repacking process or via a winning UHF-to-VHF or high-VHF-to-low-VHF bid, even if they wish to apply for an alternate channel or expanded facilities as discussed below. This period will provide stations with significantly more time to prepare their applications than the 45-day deadline that typically follows the conclusion of a channel change rulemaking proceeding. A longer filing period is appropriate because stations that are assigned new channels in the repacking process will have no prior input into the choice of channel. While stations may need more time to prepare their applications than is typically afforded for voluntary channel changes, a three-month filing period will be adequate because the technical facilities stations must apply for will be specified in the *Channel Reassignment PN* and, consequently, the amount of

engineering work stations will need to do before filing their applications will be limited. Stations unable to meet the three-month deadline for submission of their minor change application will have the option to seek a waiver no later than 30 days prior to the deadline. Any stations that are granted a waiver of the construction permit application deadline nonetheless will be required to complete their transition pursuant to the process and by the deadlines established below. The fact that a station intends to file for an alternate channel or expanded facility as set forth below would not constitute ''good cause'' for failing to meet the three-month filing deadline, except in those instances where it is impossible for the station to apply for the facility assigned in the repacking process. This could occur, for example, if a station is unable to construct the facility specified in the *Channel Reassignment PN* on the tower on which it is operating at the time the Public Notice is released. Because of the finite reimbursement period established in the Spectrum Act and the deadlines under which stations will be required to complete their transitions, stations are strongly encouraged to submit their applications by the three-month deadline, if possible.

394. Stations reassigned to different channels within their existing band will have the flexibility to propose transmission facilities in their initial construction permit applications that would slightly extend their coverage contour, as defined by the technical parameters specified in the *Channel Reassignment PN.* The Commission's repacking methodology will preserve stations' existing antenna azimuth patterns and locations (i.e., their geographic coordinates and antenna height). However, some stations may need to request a slightly different antenna pattern or slightly different location than specified in the *Channel Reassignment PN* that necessarily may result in a slightly larger coverage contour in some directions. Such deviations may be necessary, for example, because the original antenna model is not available on the reassigned channel or because the dimensions of the new antenna necessitate a slightly different mounting location on a tower. Also, some stations reassigned to a different channel within their band may experience some loss in coverage area due to propagation differences between channels.

395. Accordingly, stations may propose transmission facilities in their initial construction permit applications that will increase their coverage contour if such facilities: (1) Are necessary to achieve the coverage contour specified in the *Channel Reassignment PN* or to address loss of coverage area resulting from their new channel assignment; (2) will not extend a full power station's noise limited contour or a Class A station's protected contour by more than one percent in any direction; and (3) will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other station. In proposing facilities under this option, stations will be required to use a manufactured antenna that has a pattern that closely conforms to the coverage area based on the technical parameters in the *Channel Reassignment PN.* A one percent coverage contour increase is *de minimis* and providing this flexibility will assist broadcasters in engineering their facilities and quickly transitioning to their new channels. Stations reassigned to a channel within the same band that wish to extend their contour area by more than one percent may do so as discussed below.

396. Due to antenna pattern variations between UHF and VHF antennas and between high VHF and low VHF antennas, some stations moving from the UHF to the VHF band or from the high VHF to the low VHF band may not be able to obtain an antenna that replicates the coverage contour reflected in the *Channel Reassignment PN.* Accordingly, stations moving to or between the VHF bands may specify an antenna that would result in a larger coverage contour than that resulting from the technical parameters specified in the *Channel Reassignment PN,* as long as the proposed facility will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other station.

397. The Commission also will provide expedited processing for certain applications if a station's application meets all three of the following requirements: (1) It does not seek to expand the coverage area, as defined by the technical parameters specified in the *Channel Reassignment PN,* in any direction; (2) it seeks authorization for facilities that are no more than five percent smaller than those specified in the *Channel Reassignment PN* with respect to predicted population served; and (3) it is filed within the three-month deadline for submission of minor change applications. The Commission adopted the same expedited processing procedure with the same criteria during the DTV transition, which enabled the Media Bureau to quickly process a large percentage of the post-transition digital construction permit applications it received after adopting the post-transition Table of Allotments. Stations that propose transmission facilities in their initial construction permit applications that extend the coverage contour specified in the *Channel Reassignment PN* will not qualify for expedited processing.

b. Alternate Channel and Expanded Facilities Opportunities

398. Stations assigned to new channels in the repacking process as well as winning UHF-to-VHF and high-VHF-to-low-VHF bidders will have an opportunity to seek an alternate channel. Stations moving from a UHF to a VHF channel will not be permitted to request an alternate UHF channel. Allowing such requests would be directly contrary to the premise of UHF-to-VHF bids. For the same reason, stations submitting winning UHF-to-VHF bids that specify the high-VHF band or the low-VHF band, and stations submitting winning high-VHF-to-low-VHF bids, will not be permitted to request a channel outside of their assigned band. In some cases, a broadcaster may determine that a different channel will be more desirable or will make the transition process simpler and less costly. Stations assigned to new channels and winning UHF-to-VHF and high-VHF-to-low-VHF bidders may also apply for construction permits for ''expanded facilities'' on their new channels. ''Expanded facilities'' are those that propose a change in height above average terrain, effective radiated power, or transmitter location that (i) would be considered a minor change under the Commission's rules; and (ii) in the case of a station reassigned to another channel within its existing band, would result in a change in such station's contour beyond one percent in any direction from the coverage area defined by the technical parameters specified in the *Channel Reassignment PN.* As a practical matter, stations' ability to identify an available alternate channel or to expand their facilities may be limited as a result of the repacking process. In general, if an application for an alternate channel or expanded facilities is granted, the deadline in the construction permit for the alternate channel or expanded facilities will be the same as the deadline in the station's initial construction permit. The Commission will consider granting longer construction periods for alternate channels or expanded facilities in situations where extenuating circumstances justify such an extension.

399. In view of the anticipated scarcity of available broadcast spectrum to accommodate proposals for alternate channels and expanded facilities

following the repacking process, the Commission will give a filing priority to certain stations, including any station that demonstrates that it is unable to construct facilities that meet the technical parameters specified in the *Channel Reassignment PN,* or the permissible contour coverage variance discussed above, for reasons beyond its control. These stations will be required to demonstrate in a request for a waiver of the three-month filing deadline for initial construction permit applications that it was not possible to file an application that was in compliance with the technical parameters in the *Channel Reassignment PN* or with the flexibility to propose alternative transmission facilities discussed above, which require that a station apply for its new channel at its current transmission site. The Commission delegates authority to the Media Bureau to define other categories of stations that may be eligible for a filing priority due to extraordinary circumstances beyond a station's control. Stations qualifying for a priority may request either an alternate channel or expanded facilities on their newly assigned channel. As is the case with all major and minor modification applications, stations filing for alternate channels or expanded facilities will be required to demonstrate that their proposals meet all existing technical and interference requirements and would serve the public interest. Moreover, modification applications filed by Class A stations will not be accepted if they fail to comply with the interference protection rules for Class A stations. A second filing opportunity will be offered to all other stations that are assigned new channels in the repacking process or that are winning UHF-to-VHF or high-VHF-to-low-VHF bidders to file for alternate channels or expanded facilities. Consistent with the Media Bureau's past practice in lifting filing freezes, applications filed during the first filing opportunity would be treated as cut-off as of the end of that filing period, and would be entitled to interference protection from subsequently filed applications.

400. A station seeking an alternate channel must submit a construction permit application on FCC Form 301, 301–CA, or 340. Some priority stations will not have an opportunity to submit an application for a construction permit during the initial three-month filing window. The initial construction permit applications of these stations for alternate channels or expanded facilities will not be subject to filing fees. An applicant requesting any additional modification, however, will be subject to the appropriate fee. Non-priority stations seeking alternate channels or expanded facilities will be subject to applicable filing fees. Unlike new channel assignments generated by the Commission in the repacking process, these alternate channel requests will be initiated by licensees without the benefit of the Commission's repacking methodology. Thus, applications for alternate channels will be considered major change applications and thus will be subject to local public notice requirements and a 30-day petition to deny filing window. Applications for expanded facilities on the channel assigned to a station in the *Channel Reassignment PN* are limited to minor changes.

401. The Commission delegates authority to the Media Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities applications and specifying appropriate processing guidelines, including the standards to qualify for priority filing, ''cut-off'' protections, and means to avoid or resolve mutual exclusivity between applications. As discussed above, LPTV stations that were eligible for a Class A license but did not file an application for a Class A license until after February 22, 2012 will not be protected in repacking. If such a station obtains a Class A license and is displaced in the repacking process, it may file a displacement application during one of the filing opportunities for alternate channels. Except as indicated here, existing displacement rules will apply to such applications. *See* 47 CFR 73.3572(a)(4) and 74.787(a)(4). The Commission delegates authority to the Media Bureau to determine whether such stations should be permitted to file for new channels along with priority stations or in the second filing opportunity. The Commission anticipates that the first filing opportunity to be established by the Media Bureau will open after the staff substantially completes its processing of initial minor change construction permit applications following the release of the *Channel Reassignment PN.* After all stations that are reassigned new channels in the repacking process and successful UHF-to-VHF and high-VHF-to-low-VHF bidders have been given an opportunity to apply for alternate channels or expanded facilities, the Commission anticipates that the Media Bureau will lift other filing freezes now in place.

c. Channel Sharing Stations

402. The term ''sharee'' refers to a station that relinquishes its frequency to move to the frequency of a ''sharer'' station. More than two stations may share a channel. Thus, although there would be only one sharer in each channel sharing relationship, there could be multiple sharees. The licensees of channel sharing stations (i.e., both the sharer station and the sharee station(s)) will be required to submit license applications within three months after the sharee stations receive their auction proceeds. The Commission delegates authority to the Media Bureau to amend FCC Forms 302 and 302–CA prior to the commencement of the auction to add a category for the licensing of shared channels. As discussed below, sharee stations will be required to terminate operations on their pre-auction channels by this deadline. This same deadline will apply regardless of whether the sharer station is assigned a new channel in the repacking process. While channel sharing stations that are reassigned to a new channel will be afforded a construction period before they must transition to their reassigned channel, there is no basis to delay the commencement of shared operations or the clearing of the sharee's channel. In the event the sharer station is assigned a new channel in the repacking process, all sharing stations will be required to jointly file a Form 301 minor change construction permit application consistent with requirements in the Construction Permit Application Filing Requirements Section. The Commission delegates authority to the Media Bureau to amend FCC Forms 301, 301–CA, and 340 prior to the commencement of the auction to add a category for the licensing of shared channels. Upon grant of such license applications, Commission staff will issue each station in a sharing arrangement a new license indicating ''shared'' status through the use of an ''S,'' designating the shared channel as the operating frequency for each station, specifying each station's class of service (i.e., commercial full power, NCE, or Class A), and indicating a sharee station's new community of license where appropriate.

2. Construction Schedule and Deadlines

403. The Commission concluded that the record in the proceeding shows the need for a post-incentive auction transition timetable that is flexible for broadcasters and that minimizes disruption to viewers. At the same time, the transition schedule must provide certainty to wireless providers and be completed as expeditiously as possible. With these goals in mind, the Commission adopted a 39-month transition period (the Broadcast Transition Period) for broadcasters that

are assigned new channels in the repacking process and winning UHF-to-VHF and high-VHF-to-low-VHF bidders. The Broadcast Transition Period will include (1) the three-month period beginning upon the release of the *Channel Reassignment PN,* during which broadcasters will complete and file their construction permit applications (stations eligible for reimbursement from the Reimbursement Fund also will be required to file their estimated cost forms by this deadline) followed by (2) a 36-month period consisting of varied construction deadlines (the Broadcast Construction Period).

404. Post-auction, the Media Bureau, on delegated authority, will establish a set of construction deadlines during the Broadcast Construction Period. While some stations will be given 36 months to complete construction, other stations will be given shorter deadlines. At the end of the 39-month Broadcast Transition Period, all stations must cease operating on their pre-auction channels regardless of whether they have completed construction of the facilities for their post-auction channel.

405. The Commission adopted a three-month deadline from the receipt of auction proceeds by winning license relinquishment bidders and channel sharing ''sharee'' bidders to terminate operations on their pre-auction channels (a ''sharee'' station is a full power or Class A television station that agrees to relinquish its channel and share with another station (the sharer) pursuant to a channel sharing bid in the reverse auction). The Commission offered stations the flexibility to seek a single extension of their construction deadlines and to operate temporary facilities during construction. Although it will consider extensions of stations' individual construction deadlines for new post-auction channels, the Commission stated that no station with a new channel assignment will be permitted to operate on its pre-auction channel after the end of the Broadcast Construction Period. This approach will provide sufficient flexibility to both broadcasters and the Commission to ensure a successful, expeditious transition, while minimizing disruption to consumers and providing appropriate certainty to the wireless industry.

a. Construction Period for Stations With New Channel Assignments

406. The Commission adopted a 36-month Broadcast Construction Period that will begin upon the filing deadline for construction permit applications for new channel assignments (i.e., three months after the release of the *Channel Reassignment PN*). The Commission concluded that a phased construction schedule, with the assignment of varying construction deadlines within this 36-month period, is most likely to ensure a successful transition for all broadcasters. Accordingly, the Commission delegated authority to the Media Bureau to establish a set of deadlines within the Broadcast Construction Period to all stations that are reassigned to a new channel in the repacking process and all winning UHF-to-VHF and high-VHF-to-low-VHF bidders. The deadlines may vary by region, by the complexity of construction tasks, or by other factors the Media Bureau finds appropriate. Regardless of a station's individual construction schedule, no station will be permitted to continue to operate on its pre-auction channel beyond the end of the Broadcast Construction Period. Any station that has not completed construction by the end of the Broadcast Construction Period must go dark on its pre-auction channel and cease operations until it finishes construction of its new facilities. In addition, as soon as a station begins operating on its post-auction channel, it must terminate operations on its pre-auction channel.

407. The Commission directed the Media Bureau, as soon as possible after the filing of construction permit applications, to announce both the phased construction schedule and stations' construction deadlines in a public notice (any permit issued before the Media Bureau establishes the pertinent construction deadlines will be conditioned on the Media Bureau's subsequent adoption of such deadlines; as soon as a station's deadline is determined, the Media Bureau will reissue the station's authorization with the construction deadline). The Commission stated that it expects that the Media Bureau will work with the Wireless Telecommunications Bureau to coordinate the construction deadlines of stations transitioning to new channels, taking into account the needs of forward auction winners and their construction plans.

408. The Commission was persuaded by the record that establishing a single deadline by which all stations must complete construction is infeasible. The Commission concluded that the flexibility to evaluate and address all of the relevant variables through a phased construction schedule based on the actual outcome of the auction will be critical to the success of the transition. This approach will enable the Media Bureau to take each of the above factors, as well as any others that may be relevant, into account.

409. The Commission also concluded that the proposal in the NPRM to complete the entire post-auction transition within 18 months would not provide sufficient time for all stations to complete the transition process. The Commission agreed with commenters that a universal 18-month transition deadline would not adequately take into account the many factors that will have to be considered when determining station construction deadlines. The Commission found that a longer construction period is necessary to ensure a smooth channel transition for all stations.

410. The Commission found that a 36-month Broadcast Construction Period will provide sufficient time to complete a phased transition of all stations assigned to new channels. The Commission concluded that 36 months is the appropriate maximum time period for stations to complete construction after they request permits for their post-auction facilities. Moreover, adopting a construction period that closely coincides with the three-year period established in the Spectrum Act to reimburse broadcasters for their repacking expenses will best ensure that stations are successfully reimbursed for their reasonably incurred expenses.

411. The Commission concluded that it is not necessary to afford all reassigned broadcasters 36 months or longer to construct post-auction facilities. The Commission recognized that some stations will face significant challenges in completing the post-auction transition to their new facilities but stated that the Media Bureau will take such challenges into account when assigning individual construction deadlines. The Commission found that adopting a lengthier post-auction transition period could depress forward-auction participation or the value of investments made by forward auction winners. The Commission stressed that the end of the Broadcast Construction Period will mark the latest date on which broadcasters will be permitted to cease operations on their pre-auction channels. Moreover, as discussed below, license relinquishment bidders and sharee stations that are parties to winning channel sharing bids will be required to cease operations within three months of receiving their auction proceeds. Thus, it is likely that many full power and Class A stations will vacate spectrum repurposed for flexible wireless use well before the end of the Broadcast Construction Period.

b. Winning Bidders for License Relinquishment and Channel Sharing

412. The Commission will require that all winning license relinquishment bidders terminate operations on their pre-auction channels within three months of receipt of their reverse auction proceeds. The Commission will allow these stations to seek special temporary authority or waiver of the operating rules, including its rules on minimum operating hours, in order to facilitate the final termination of their operations. In addition, the Commission adopted a three-month deadline from receipt of reverse auction proceeds for sharee stations that are party to a winning channel sharing bid to terminate operations on their pre-auction channel and transition to their shared channel (sharee stations must comply with the consumer and MVPD notification requirements set forth in the Report and Order and will be required to notify the Commission of the termination of operations on their pre-auction channel pursuant to the established procedures). The Commission expects that the termination of operations of the sharee's pre-auction channel and transition to a shared channel will occur on the same day and thus not result in any gap in service. Because these stations will not have to construct new facilities in order to effectuate their channel change, three months is sufficient for them to cease operations on their pre-auction channels. This deadline will apply regardless of whether or not the sharer station to which the sharee station is transitioning is reassigned to a new channel in the repacking process. If a sharer station is reassigned to a new channel, all broadcasters with shared status will be required to cease operations on the sharer's pre-auction channel and transition to the new channel in accordance with the phased post-auction transition procedures adopted in the Report and Order and the construction permit issued for the new channel (winning channel sharing bidders whose shared channel is reassigned in the repacking process will be required to share on the sharer's pre-auction channel prior to construction of their newly assigned channel).

413. The Commission will permit stations terminating operations to submit a waiver request pursuant to 47 CFR 1.3 of the rules (such waiver requests must be filed electronically in CDBS as a request for a legal Special Temporary Authority, provide the requisite waiver showing and include a proposed termination date, not to exceed three additional months; stations should file such requests as soon as it becomes apparent that they will not be able to meet the three-month termination deadline). In addition, no winning license relinquishment or channel sharing bidder will be granted a waiver beyond the end of the Broadcast Construction Period. The staff will view requests for up to three additional months to terminate operations most favorably, and the Commission anticipates that requests for any additional time will be unlikely to meet the waiver standard.

c. Additional Flexibility for Stations With New Channel Assignments

414. The Commission will permit stations assigned new channels in the repacking process and winning UHF-to-VHF and high-VHF-to-low-VHF bidders to seek a single extension of up to six months of their original construction deadlines. Although a construction deadline may be extended beyond the end of the Broadcast Construction Period, stations may not operate their pre-auction channels after that date (stations that are still constructing after the end of the Broadcast Construction Period will have to go dark on their pre-auction channels while they complete construction of their new channel facilities).

415. The Commission will evaluate requests for extensions using procedures similar to those used during the DTV transition, based on criteria tailored to the types of construction stations will need to undertake during the post-auction transition. Stations anticipating the need for an extension will be required to submit an extension application no less than 90 days before the expiration of their construction permit and demonstrate that, despite all reasonable efforts, they are unable to complete construction of their new facilities on time due to circumstances that were either unforeseeable or beyond their control (extension requests must be filed electronically in CDBS using FCC Form 337). The following circumstances may justify an extension of a station's construction deadline: (1) Weather-related delays, including a tower location in a weather-sensitive area; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) ''unusual technical challenges,'' such as a top-mounted or side-mounted antenna or the need to coordinate channel changes with another station; or (5) delays faced by broadcast stations that must obtain government approvals, such as land use or zoning approvals, or that are subject to competitive bidding requirements prior to purchasing equipment or services. The Commission will permit licensees to rely on other circumstances to support an extension only if the licensee is able to show that the circumstance was unforeseeable or beyond its control and that it took all reasonable efforts to resolve the issue.

416. The Commission will permit stations to rely on ''financial hardship'' as a criterion for seeking an extension of time only in limited circumstances. In the past, the Commission has allowed stations to support an extension request based on a showing that ''the cost of meeting the minimum build-out requirements exceeds the station's financial resources.'' In this case, because stations will be eligible for an initial allocation of estimated construction costs, stations should not have to rely significantly on self-financing or outside financing for their construction. In addition, a station transitioning to a new channel as a result of a winning UHF-to-VHF or high-VHF-to-low-VHF bid will have access to auction proceeds to fund new construction. Accordingly, the Commission will allow stations that are subject to an active bankruptcy or receivership proceeding to seek an extension based on financial hardship, provided that the station makes an adequate showing that it has filed requests to proceed with construction in the relevant court proceedings. The existence of such proceedings, and the restrictions that may be imposed on the use of funds, justify allowing such stations to seek additional time to complete construction, if necessary. Any other station that seeks an extension of time based on financial hardship must demonstrate that, although it is not subject to an active bankruptcy or receivership proceeding, rare and exceptional financial circumstances nevertheless warrant granting additional time to complete construction of their facilities. Stations will be allowed, if granted, only a single extension of up to six months beyond their original construction deadline before being subject to the Commission's stricter tolling provisions. The Commission rejected calls to use its stricter ''tolling'' criteria to any extension requests finding that use of extension criteria for the first extension request is appropriate.

417. The Commission will also allow stations to operate with temporary facilities while they complete construction (stations seeking an STA must satisfy the notice and filing requirements of rules and file an electronic request through CDBS). Absent an STA, no station will be permitted to operate on its pre-auction

channel past the station's individual construction deadline, and the Commission will not grant STAs to operate on pre-auction channels past the end of the Broadcast Construction Period. The Commission will allow stations, on a case-by-case basis, to seek STAs for technical solutions that are similar to those permitted during the DTV transition, will examine all such requests to determine whether they would serve the public interest, and will require that all STAs not cause impermissible interference to other broadcast or wireless licensees. All STAs granted in connection with the post-auction transition will be for a maximum of 180 days, the amount of time provided under the Communications Act and the Commission's rules for STA requests. In addition, the Media Bureau will reserve the right to modify or cancel an STA at any time without prior notice at its sole discretion.

418. The Commission also notes that the license of any station that is dark for any consecutive 12-month period expires at the end of that period, except that the Commission can extend or reinstate such license ''to promote equity and fairness.'' Stations with new channel assignments that remain dark for any consecutive 12-month period may seek an extension or reinstatement of their license and a waiver of the pertinent Commission rules. In considering such requests, the Commission will take into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.

3. Consumer Education

419. The Commission will require that all ''transitioning stations'' air viewer notifications for a minimum of 30 days prior to the date that the station will terminate operations on its pre-auction channel (''transitioning stations'' are defined as full power and Class A television stations that are: (1) Reassigned to new channels by the Commission, (2) successful UHF-to-VHF and high-VHF-to-low-VHF bidders, (3) successful license relinquishment bidders, or (4) parties to a successful channel sharing bid; channel sharer stations will be required to participate in consumer education only if they are reassigned to a new channel in the repacking process). The Commission will provide stations with flexibility to target their messages to their specific situations in order to minimize public confusion and the effect of any service disruptions.

420. Transitioning stations that operate on a commercial basis will be required to air a mix of Public Service Announcements (PSAs) and crawls. Such stations must air at least one transition PSA and run at least one transition crawl in every quarter of every day for 30 days prior to the date that the station terminates operations on its pre-auction channel. Further, one of the required PSAs and one of the required crawls must be run during primetime hours each day. Crawls must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area and be provided in the same language as a majority of the program carried by the station. Crawls must include the date that the station will terminate operations on its pre-auction channel, inform viewers of the need to rescan if the station has received a new channel assignment, and explain how viewers may obtain more information by telephone or online. PSAs must have a duration of at least 15 seconds, and each PSA must provide, at a minimum, the same information as required for crawls. For stations relocating to new channels, PSAs also must provide instructions to both over-the-air and multichannel video programming viewers regarding how to continue watching the station. In addition, the Commission requires that transition PSAs be closed-captioned. Stations are encouraged to include any other details about their transition that they believe to be important in their notifications, and stations are free to air additional notifications regarding the transition that they deem beneficial to their viewers.

421. Noncommercial educational (NCE) full power stations may choose to comply with notification requirements either through the framework for commercial stations or by airing 60 seconds per day of on-air consumer education PSAs for 30 days prior to termination of operations on their pre-auction channel. NCE stations choosing the alternate plan will have the discretion to choose the timeslots for these PSAs. The NCE transition PSAs must include the same information as noted above and must be closed-captioned. NCE stations electing this alternative are expected to air these PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities.

422. The Commission will not impose periodic reporting requirements on transitioning stations finding that such requirements will not be necessary during the forthcoming transition given the less extensive nature of the consumer education requirements being adopted. Instead, the Commission will require that stations transitioning to a new channel place a certification of compliance with consumer notification requirements in their online public files within 30 days after beginning operations on their post-auction channels. In the case of winning license relinquishment bidders, stations must include the certification in their notifications of discontinuation of service.

423. The Commission directs the Consumer and Governmental Affairs Bureau (CGB), working in coordination with the Media Bureau and the Wireless Telecommunications Bureau, to develop a comprehensive consumer outreach plan to enhance consumer awareness regarding the transition. These efforts should be coordinated with stakeholder groups' outreach efforts. For example, CGB should consider updating the Commission's existing call center capabilities to offer consumer assistance on such matters as rescanning and other means to resolve potential reception issues. The Commission also directs CGB to encourage the development of third-party call centers, such as one that might be established by a group of Transitioning Stations working together. In addition, CGB should examine the possibility of providing additional information and guidance to consumers on how to prepare for the transition through the Commission's Web site (*www.fcc.gov*). For example, the staff could post maps online to inform consumers regarding the station signals that will be affected by the transition, as it did during the DTV transition. CGB also should endeavor, where staff and resources are available, to conduct in-person outreach at the most relevant consumer events.

4. Notice to MVPDs

424. The Commission will require all transitioning stations to provide notice to relevant multichannel video program distributors (MVPDs) that: (1) No longer will be required to carry the station because it will cease operations or because of the relocation of a channel sharing sharee station; (2) currently carry and will continue to be obligated to carry a station that will change channels; or (3) will become obligated to carry a station due to a channel sharing relocation. The required notice must be provided in the form of a letter notification and include the following information: (1) Date and time of any channel changes; (2) pre-auction and post-transition channel assignments; (3) modification, if any, to antenna

position, location, or power levels; (4) stream identification information for channel sharing stations; and (5) engineering staff contact information. Should any of this information change during the station's transition, an amended notification must be sent. For cable systems, the letter must be addressed to the system's official address of record provided in the cable system's most recent filing in the Cable Operations and Licensing System (COALS) Form 322. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

425. Further, stations are required to provide notice within the following time frames: (1) For successful license relinquishment bidders, not less than 30 days prior to terminating operations; (2) for channel sharing sharee stations, not less than 30 days prior to terminating operations of the sharee's pre-auction channel; (3) for all channel sharing stations (i.e., both the sharer station and sharee station(s)), not less than 30 days prior to initiation of operations on the sharer channel; and (4) for all other stations transitioning to a new channel, including stations that are assigned to new channels in the repacking process and successful UHF-to-VHF and high-VHF-to-low-VHF bidders, not less than 90 days prior to the date on which they will begin operations on their reassigned channel. In addition, should a station's anticipated transition date change due to an unforeseen delay or change in transition plan, the station must send a further notice to affected MVPDs informing them of the new anticipated transition date. The Commission rejects longer notice periods finding that it is not likely that stations will know that far in advance when construction will be completed and operation on a new channel will begin. In addition, the adopted timeframes, as well as the requirement to notify MVPDs of any change to anticipated transition dates, will provide ample time for MVPDs to make the necessary changes to their systems.

426. The Commission waived the 30-day advance notice requirement in 47 CFR 76.1603(c) with respect to deletions from a cable system's channel line up resulting from a successful license relinquishment bid. Instead, the Commission requires MVPDs to provide such notice as soon as practical.

5. Reimbursement of Relocation Costs

427. The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process and MVPDs for costs reasonably incurred in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid. As explained in the *NPRM,* Congress specified that these reimbursements be made from the TV Broadcaster Relocation Fund (the Reimbursement Fund), and that the amount available for reimbursement of relocation costs is $1.75 billion. In addition, under the Spectrum Act, the Commission must make all reimbursements within three years after completion of the forward auction (the Reimbursement Period). The Commission delegates rulemaking authority to the Media Bureau to address additional aspects of the reimbursement process at the appropriate time.

a. Television Station Licensees and MVPDs Eligible for Reimbursement

428. With respect to broadcasters, the Commission adopts the tentative conclusion that the reimbursement mandate applies only to full power and Class A television licensees that are involuntarily reassigned to new channels in the repacking process pursuant to Section 6403(b)(1)(B)(i). The Commission will not reimburse winning reverse auction bidders (i.e., winning UHF-to-VHF, high-VHF-to-low-VHF, or channel sharing bidders) for voluntary frequency changes. This interpretation is both consistent with the language of Section 6403(b)(4) and reasonable, in that successful reverse auction bidders can be expected to cover any relocation costs stemming from their successful bids out of auction proceeds. As proposed in the *NPRM,* sharer stations that participate in a channel sharing arrangement will be eligible for reimbursement only if they are reassigned to a new channel in the repacking process. Moreover, consistent with the proposal in the *NPRM,* and as required by Section 6403(b)(4)(A)(i), the Commission will reimburse any station formerly on channel 51 that must relocate again because its new channel is reassigned in the repacking process, even if it previously relocated from channel 51 pursuant to a private agreement.

429. Stations that are not reassigned to a new channel will not be eligible for reimbursement. Section 6403(b)(4)(A)(i) expressly mandates reimbursement only for television licensees ''that [are] reassigned under [Section 6403(b)(1)(B)(i)]'' in the repacking process, and does not require reimbursement for stations that are not reassigned to new channels. Some commenters argue that the Commission has discretionary authority to reimburse such broadcasters. Even assuming that the Commission has such authority, it declines to exercise it. In light of the limited amount of money Congress made available to reimburse broadcasters and MVPDs for relocation costs, the Commission will limit reimbursements to those provided for by the Spectrum Act. The Commission notes that, in some cases, stations that are not reassigned to new channels but that sustain expenses due to the repacking process may be reimbursed indirectly. The Commission notes, however, that in such a situation only the reassigned station would be eligible to seek reimbursement from the Reimbursement Fund for any such costs. For example, where multiple stations share a tower, a reassigned station that makes changes may be required to cover certain expenses incurred by other tower occupants. In such circumstances, the Commission will consider a claim from the reassigned station for reimbursement of such costs, so long as the reassigned broadcaster has a contractual obligation to pay these expenses through a contract entered into on or before the release date of this Order. Parties may receive such reimbursement with respect to contracts entered into after that date if they can show good cause for such reimbursement. The Commission also notes that there may be instances in which a non-reassigned station may benefit indirectly from a reimbursement to a reassigned station.

430. MVPDs will be eligible for reimbursement when they reasonably incur costs in order to continue to carry broadcast stations that are reassigned as a result of the auction. The Commission anticipates that the vast majority of MVPD carriage expenses will be due to channel changes made by broadcast stations that an MVPD already carried prior to the auction. Moreover, the Commission anticipates that most MVPD carriage costs will result from broadcasters being reassigned to new channels, and not from a successful channel sharing bid. In the case of an involuntary channel reassignment or a winning UHF-to-VHF or high-VHF-to-low-VHF bid, an MVPD that already carried the station in question will need to accommodate its new channel assignment. In the case of most channel sharing arrangements where the MVPD likely already carries the sharer station, the Commission expects that the MVPD's transition costs will be relatively inexpensive because it will not be required to accommodate a new

channel assignment. However, there may be a limited number of situations in which an MVPD incurs a new carriage obligation due to the relocation of a sharee station. The Commission concludes that MVPDs that must fulfill any such new carriage obligations will be eligible for reimbursement of their reasonably incurred costs, just as they will be eligible for reasonably incurred costs to continue carrying other reassigned stations and winning bidders. The Spectrum Act does not expressly mandate reimbursement for costs to continue to carry stations that submit winning high-VHF-to-low-VHF bids. However, the Commission concluded above that the Spectrum Act does not preclude the Commission from adopting this additional bid option, and similarly concludes that the Spectrum Act does not preclude it from reimbursing MVPDs for the reasonably incurred costs to continue carrying winning high-VHF-to-low-VHF bidders.

431. The Commission interprets Section 6403(b)(4)(A)(ii)(III), which mandates reimbursement of MVPDs' costs ''in order to continue to carry'' a broadcaster that relinquishes its spectrum to share with another licensee, to cover costs an MVPD reasonably incurs so that a broadcaster continues to be carried on an MVPD service after the auction, regardless of whether that particular MVPD or a different one previously carried the station. Although the statute does not directly address this issue, Section 6403(a)(4) guarantees that a channel sharee that had carriage rights before the auction will have the carriage rights that apply at its new shared location rather than its original location. Since Congress expressly preserved channel sharing broadcasters' carriage rights at their new locations regardless of whether an individual MVPD's carriage obligations are changed, it is reasonable to infer that Congress intended for MVPDs to be eligible for reimbursement when they incur costs in accommodating those rights. As NCTA explains, reading the statute as ''precluding reimbursement of a cable operator acting to fulfill the broadcaster's right to carriage would create an asymmetry'' that would penalize MVPDs. The Commission agrees with NCTA that such an outcome would be contrary to Congress' intent.

b. Reimbursement Process

432. The Commission's goals in developing a reimbursement process are threefold. First, the process must be as simple and straightforward as possible to minimize the costs associated with reimbursement as well as the burdens on both affected parties and the Commission. Second, the process must be prompt and efficient in light of the three-year statutory deadline for issuing reimbursements. Third, the process must be fair: It must cover broadcasters' and MVPDs' eligible costs reasonably incurred and maximize the funds available for reimbursement by avoiding waste, fraud, and abuse.

433. The Commission adopts a reimbursement process that provides initial allocations of funds to broadcasters and MVPDs based on their estimated costs. The funds will be available for draw down as the broadcasters and MVPDs incur expenses, followed by a subsequent allocation to the extent necessary. As discussed more fully below, all entities seeking reimbursement will be required to provide an estimate of their eligible costs following the release of the *Channel Reassignment PN.* The Media Bureau will review the estimates based on the Catalog of Eligible Expenses being developed by the Bureau. Eligible entities will be issued an initial allocation from the Reimbursement Fund equal to a set percentage of their estimated eligible costs. Prior to the end of the three-year Reimbursement Period, entities will provide information regarding their actual and remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs. If an overpayment is discovered after the end of the Reimbursement Period, entities will be required to return the excess to the Commission.

434. *Reimbursement Period.* As discussed above, the Spectrum Act requires the Commission to make all required reimbursements no later than three years after completion of the forward auction. The Commission concludes above that the forward auction will be ''complete'' when a public notice announces that the auction has ended. Accordingly, all required reimbursements must be made within three years of the date of that announcement. The Commission will not issue any reimbursements before completion of the forward auction.

435. *Estimated Versus Actual Cost Approach.* The Commission will issue all eligible broadcasters and MVPDs an initial allocation of funds based on estimated costs, which will be available for draw down (from individual accounts in the U.S. Treasury) as the entities incur expenses, followed by a subsequent allocation to the extent necessary. Although the process established is similar to an approach based on advance payments, the Commission has concluded that such advances would not be permissible under Title 31 of the United States Code and applicable U.S. Treasury regulations and guidance thereunder. Specifically, in order to comply with U.S. Treasury requirements, the Commission must allocate funds to designated individual accounts within the U.S. Treasury that will be available for draw down as broadcasters and MVPDs incur eligible expenses. Under this approach, consistent with an advance payment approach, entities will be able to use federal funds initially to pay their expenses as they are incurred. The process the Commission adopts allows it to comply with its statutory obligations both to reimburse costs reasonably incurred under Section 6403(b)(4)(A) and to provide entities with the funds to implement their relocation changes within the statutory three-year reimbursement period under Section 6403(b)(4)(D). In addition, it preserves the integrity of the Fund by reducing the likelihood of waste, fraud, and abuse.

436. *Submission of Estimated Costs.* No later than three months following release of the *Channel Reassignment PN,* all broadcasters and MVPDs that are eligible for reimbursement will be required to file a form providing an estimate of their channel relocation costs. These forms will be due at the same time that broadcasters assigned new channels must file their construction permit applications to implement the channel reassignments. Entities must update the form if circumstances change substantially. For example, such an updated form would be required if entities later become aware of substantial expenses that were not identified on the initial form or if they make a subsequent determination that money from the Reimbursement Fund should be expended for equipment or other expenses different from those outlined in the initial estimated cost form. The estimated cost forms, along with the submissions discussed below, will be filed with the Commission electronically and will be publicly available. Entities requesting confidential treatment of information included in either form should submit a request under Section 0.459 of the Commission's rules. Even if some forms or documents are confidential, the Media Bureau will make public the amounts distributed from the Reimbursement Fund to each broadcaster and MVPD. MVPDs must review the *Channel Reassignment PN* to determine whether stations they currently carry are changing channels. If an entity that did not file an estimated cost form becomes aware of an expense

eligible for reimbursement after the three-month deadline, it may file a late estimated cost form together with an explanation of why the form could not be timely filed. The Commission will consider any late-filed forms on a case-by-case basis.

437. On the estimated cost form, eligible broadcasters will provide an estimate of the costs they expect to reasonably incur to change channels, and MVPDs will estimate the costs they expect to reasonably incur to accommodate new channel assignments. The estimated cost form for television stations will reference the final Catalog of Eligible Expenses, which will contain a list of many, but not necessarily all, of the modifications a station may have to make in order to change its channel, as well as the predetermined estimate of the cost, or range of costs, for equipment and other expenses associated with those modifications. Similarly, the estimated cost form for MVPDs will contain a list of many, but not necessarily all, of the cable or satellite system changes an MVPD may be required to make to accommodate new station channel assignments, as well as the predetermined estimate of the cost or cost range for most of those changes. For equipment or other changes for which there is a predetermined cost estimate, stations and MVPDs may select either the predetermined cost estimate or provide their own individualized estimate if they believe the predetermined estimate does not fully account for their specific circumstances. Entities that reject the predetermined estimate as too low will be required to justify the higher cost. For any expenses for which there is not a predetermined cost estimate, the station or MVPD will be required to provide an individualized cost estimate. The Commission will require entities that provide such individualized cost estimates to submit supporting evidence and to certify that the estimate is made in good faith.

438. Regardless of whether they are claiming predetermined cost estimates or their own individualized estimated costs, each broadcaster and MVPD will be required to certify, inter alia, that: (1) It believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, (2) it will use all money received from the Reimbursement Fund only for expenses it believes are eligible for reimbursement, (3) it will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund, (4) it will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred, and (5) it will file all required documentation of its relocation expenses as instructed by the Media Bureau.

439. After the estimated cost forms have been submitted, the Media Bureau will review them. For entities that choose to provide their own cost estimate (i.e., either a cost estimate higher than the predetermined cost estimate or an individualized cost estimate for an expense for which the Commission does not provide a predetermined cost estimate), the Bureau will review the required justification for the estimate and may accept it or substitute a different amount for purposes of calculating the initial allocation. Regardless of the basis for the estimate, the Bureau may determine, based on its reasonableness review of an estimated cost form and any submitted documentation, that a station or MVPD should receive a different allocation from that claimed on the form.

440. *Initial Allocation Stage.* Once the Media Bureau completes its review, it will issue an initial allocation from the Reimbursement Fund to the broadcaster or MVPD, which will be available to the entity to draw down as expenses are incurred. The issuance of an initial allocation from the Reimbursement Fund based on these estimates does not create an obligation on the part of the Commission to pay the entity's total estimated or actual relocation costs. Subject to timing constraints on allocations from the Fund that are discussed below, the Commission intends to issue NCE broadcasters initial allocations equivalent to up to 90 percent of their estimated costs eligible for reimbursement, and all other broadcasters and MVPDs initial allocations equivalent to up to 80 percent of their estimated costs eligible for reimbursement. The Commission will issue initial allocations to NCEs equivalent to a higher percentage of their estimated costs due to their unique funding constraints. For other broadcasters and MVPDs, a slightly smaller initial allocation will be sufficient to permit them to fund construction or other reimbursable costs until a subsequent allocation phase, when all stations and MVPDs can request an additional allocation from the Reimbursement Fund if necessary to cover the remainder of their costs eligible for reimbursement. It is appropriate to withhold at least 10 percent (for NCEs) or at least 20 percent (for other stations and for MVPDs) of estimated costs until a subsequent allocation phase. The Commission concludes that this approach should ensure that broadcasters and MVPDs do not face an undue financial burden while also reducing the possibility that the Commission allocate more funds than necessary to cover actual relocation expenses.

441. The amount available to be issued as initial allocations will depend, in part, on the total amount of repacking expenses reported on the estimated cost forms. In addition, the timing of initial allocations will depend on when money in the Reimbursement Fund becomes legally available for obligation to eligible entities. The Spectrum Act authorizes the Commission to borrow up to $1 billion from the U.S. Treasury, upon the effectiveness of any reassignments or reallocations under Section 6403(b)(1)(B), to use toward reimbursement of relocation expenses, but the Commission must reimburse the Treasury for any amounts borrowed as funds are deposited into the Reimbursement Fund from forward auction proceeds. Thus, the amount available for initial allocations from the Reimbursement Fund may be limited initially to $1 billion. The remainder of the $1.75 billion will not be legally available for allocation until at least some wireless licenses have been granted to forward auction winners and sufficient forward auction proceeds are deposited into the Reimbursement Fund. If necessary, the initial allocations of funds to broadcasters and MVPDs will be made in tranches as funds become legally available.

442. *Final Allocation Stage.* Upon completing construction or other changes that are eligible for reimbursement, or by a specific deadline prior to the end of the of the Reimbursement Period to be announced by the Media Bureau, whichever is earlier, all stations and MVPDs that received an initial allocation from the Reimbursement Fund must provide the Commission with information and documentation regarding their actual expenses incurred, plus any remaining estimated expenses for entities that have not yet completed their transition. After reviewing this information, the Media Bureau will determine whether the broadcaster or MVPD incurred or will incur eligible relocation costs that are not covered by the initial allocations from the Reimbursement Fund and issue a final allocation, if appropriate, to the broadcaster or MVPD. If any allocated funds remain in an entity's Treasury account in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement

Fund. The Media Bureau will provide additional details on the filing and process requirements, including filing deadlines, for this final allocation stage in a subsequent public notice.

443. *Final Accounting Stage.* Any entities that have not completed their transition by the deadline announced by the Media Bureau during the final allocation stage must submit their final expense documentation to the Commission shortly after completing their transition and regardless of whether this occurs after the Reimbursement Period. This documentation will contain actual costs for all eligible expenses and will serve as a final accounting of all actual expenses incurred to complete the transition. The Media Bureau will provide additional details on the filing and process requirements, including filing deadlines, for this final accounting stage in a subsequent public notice.

444. *Reimbursement Contractor and Delegation of Authority.* The Commission directs the Media Bureau to engage a contractor to assist in the reimbursement process and administration of the Reimbursement Fund. The Commission notes that commenters who address the issue of whether it should hire a third-party to assist with administering reimbursements generally are supportive, so long as administrative costs are carefully controlled. The Commission concludes that the costs associated with administering the Reimbursement Fund are appropriately included in the Commission's overall costs to ''mak[e] any reassignments or reallocations'' under Section 6403(b)(1)(B). Accordingly, administrative costs will not be deducted from the Reimbursement Fund. The Commission delegates authority to the Media Bureau to engage a third-party contractor to assist in the reimbursement process, which will be overseen by the Bureau.

445. The Commission also delegates authority to the Media Bureau to create one or more forms to be used by entities to claim reimbursement from the Reimbursement Fund, as well as to report on entities' use of money disbursed from the Fund and the status of their construction efforts, and for any other Reimbursement Fund-related purposes. The Commission also delegates authority to the Media Bureau to establish the timing and calculate the amount of the allocations to eligible entities from the Reimbursement Fund, develop a final Catalog of Eligible Expenses, and make other determinations regarding eligible costs and the reimbursement process. Finally, the Commission delegates authority to the Media Bureau to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy. Given the importance of maintaining the integrity of the Fund, the Media Bureau will consult with the Office of General Counsel and the Office of the Managing Director in acting pursuant to this delegation.

c. Expenses Eligible for Reimbursement

446. The Commission cannot, at this juncture, forecast all types of reasonable expenses. The appropriate scope of ''costs reasonably incurred'' necessarily will have to be decided on a case-by-case basis. Moreover, as discussed above, the Commission delegates authority to the Media Bureau to make reimbursement determinations and to finalize the Catalog of Eligible Expenses. All claimed expenses are subject to review by the Media Bureau to ensure that each expense is reasonable.

447. *Costs Reasonably Incurred.* The Commission interprets the Spectrum Act's mandate to reimburse ''costs reasonably incurred'' to require that the Commission reimburse costs that are reasonable to provide facilities comparable to those that a broadcaster or MVPD had prior to the auction that are reasonably replaced or modified following the auction, as a result of the repacking process, in order to allow the broadcaster to operate on a new channel or to allow the MVPD to carry the signal of a broadcaster on a new channel. The Commission will permit broadcasters and MVPDs to be compensated for both ''hard'' expenses, such as new equipment and tower rigging, and ''soft'' expenses, including legal and engineering services. The Commission will allow reimbursement for modification or replacement of facilities on the post-auction channel consistent with the technical parameters identified in the *Channel Reassignment PN.* Specifically, the Commission will permit broadcasters to be reimbursed for eligible costs reasonably incurred in constructing transmission facilities for channels assigned in the repacking process if such facilities do not extend the coverage area by more than one percent in any direction based on the technical parameters for the channel assignment specified in the *Channel Reassignment PN.* The Commission reserves the right to require broadcasters to take reasonable steps to mitigate costs and share resources where possible, as such efforts may save overall Reimbursement Fund resources or contribute to more efficient use of the broadcast spectrum. The standard the Commission adopts, which ties reimbursement to facilities comparable to those in use prior to the auction, will ensure that entities can continue to operate facilities post-auction that are similar to those in operation pre-auction. For example, a full power or Class A station presently using distributed transmission system (DTS) technology will be eligible for reimbursement for a DTS. A DTV DTS employs multiple synchronized transmitters spread around a station's service area, rather than a single transmitter.

448. *Equipment Upgrades.* As a general matter, the Commission expects stations and MVPDs to obtain the lowest-cost equipment that most closely replaces their existing equipment. The Commission does not anticipate providing reimbursement for optional features beyond those already present. However, the Commission also expects that some stations and MVPDs will not be able to replace older, legacy equipment with equipment that is comparable in terms of functionality and cost because of advances in technology and because manufacturers often cease supporting old equipment when newer products become available. If the cost to replace certain equipment is reasonably incurred as a result of the repacking process, the Commission intends to reimburse for the cost of that equipment and recognize that this equipment necessarily may include improved functionality. The Commission does not, however, anticipate providing reimbursement for new, optional features in equipment unless the station or MVPD documents that the feature is already present in the equipment that is being replaced. For example, a station whose current antenna or other facilities contain components enabling the transmission of ATSC Mobile/Handheld signals and that reasonably incurs the cost to replace this equipment may claim reimbursement for replacement equipment with mobile capability. A station that does not have mobile capability, however, may not claim reimbursement for the cost of adding that capability in its replacement equipment. Eligible stations and MVPDs may elect to purchase optional equipment capability or make other upgrades at their own cost, but only the cost of the equipment without optional upgrades is a reimbursable expense.

449. *Alternate Channels and Expanded Facilities.* The Commission

will reimburse costs associated with requests for an alternate channel assignment or expanded facilities for eligible stations that receive priority processing, as described below. Such stations will be able to apply for, and receive reimbursement for eligible costs associated with constructing alternate channels or expanded facilities modifications. In the case of priority stations, such costs are ''reasonably incurred . . . in order for the licensee to relocate its television service'' to another channel because, absent construction of the alternate channel or expanded facility, such stations will be unable to relocate their service. Stations that apply for priority processing will not be required to file an estimated cost form within three months after the release of the *Channel Reassignment PN,* as other stations eligible for reimbursement must do. Instead, they must file an estimated cost form within 30 days of receiving a construction permit for an alternate channel or expanded facilities, as set forth in the *Alternate Channels and Expanded Facilities Opportunities* Section.

450. The Commission will not provide additional reimbursement to other, non-priority stations that apply for an alternate channel or expanded facilities; the Commission will reimburse these stations only for the eligible costs of relocating to the channel and facilities specified in the *Channel Reassignment PN.* In the case of non-priority stations, costs related to alternate channels or expanded facilities are not ''reasonably incurred . . . in order for the licensee to relocate its television service'' to another channel. Such stations will be able to continue to serve their coverage area and population served on the channel and pursuant to the technical parameters assigned in the repacking process without having to rely on an alternate channel or expanded facilities. For example, non-priority stations that wish to move to an alternate channel or to construct expanded facilities may incur certain costs twice during the post-auction transition process, such as the cost of completing an engineering study or preparation of a Form 301; however, the Commission will reimburse such duplicative costs only once. Even if they intend to apply for alternate channels or expanded facilities, these stations will be required to file an estimated cost form based on the facility specified in the *Channel Reassignment PN* three months after the release of the PN. Stations will receive up to 80 or 90 percent (depending on the type of station) of their estimated expenses. Ultimately, these stations will be required to make a showing that any costs for which they are seeking reimbursement are not greater than those they would have incurred if they had constructed the facility originally assigned. If a station can show that it would have incurred a particular cost regardless of the facility being constructed, and the Media Bureau determines that the cost is ''reasonably incurred,'' the cost will be eligible for reimbursement.

451. *Interim Facilities.* Stations that are assigned a new channel in the repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition. The use of interim facilities may be appropriate in the following situations, among others: (1) A station may need an additional transmitter or antenna for interim use on either its pre- or post-auction channel; (2) a station with a top mounted antenna may need to run a side mounted antenna; (3) a station with an antenna at ''X'' feet on a tower may need to operate at ''Y'' feet temporarily; (4) a station may need to operate with an antenna mounted on a different tower while it finishes mounting final facilities on its current tower or a new tower; (5) a station may need to operate on a different channel with different facilities than its final channel or facilities; or (6) a station may need to use its auxiliary or back-up facility as its main facility while it finishes final facilities. Some stations currently have licensed auxiliary facilities or own backup equipment that may be used for interim operations post-auction, while others may need to purchase or rent equipment or facilities. The Commission will treat interim facilities as a relocation expense eligible for reimbursement and will reimburse costs for such facilities that are reasonably incurred in order for a station to meet its construction deadline or to avoid prolonged periods off the air while repacking changes are made. This includes reimbursement for costs reasonably incurred by stations that receive permission to operate, on an interim basis, on a channel relinquished by a winning reverse auction bidder. The Commission will also reimburse for the costs to replace or modify existing interim facilities where such costs are reasonably incurred to accommodate a new channel assignment.

452. *Non-Recurring Signal Delivery Costs.* The Commission also provides guidance on reimbursement for the cost of establishing delivery of a good quality signal to an MVPD in cases where signal delivery is affected by post-auction channel changes. Under its rules, whether an MVPD or broadcast station is responsible for the initial and ongoing cost of delivering a good quality broadcast signal to a cable headend or a satellite receive facility depends on whether the station is carried pursuant to must-carry requirements or a retransmission consent agreement. As a general matter, winning bidders are not eligible for reimbursement of their transition expenses, including any costs they incur to deliver their signal to an MVPD. However, as stated above, MVPDs will be eligible for reimbursement of their reasonably incurred costs in order to continue to carry broadcast stations that are reassigned as a result of the auction. Reimbursable MVPD expenses include the reasonable costs to set up delivery of a signal that the MVPD is required to carry under its must-carry rules or by retransmission consent contracts, regardless of whether the station is a winning bidder or is involuntarily reassigned to a new channel in the repacking process.

453. Specifically, if a station is carried pursuant to must-carry requirements, it is required to bear delivery costs and, if it is involuntarily reassigned to a new channel, will be eligible for reimbursement of any non-recurring costs to set up delivery to the cable headend or satellite receive facility that is comparable to the delivery method used prior to the transition. If an MVPD carries a station pursuant to its must-carry rules, the MVPD will be eligible for reimbursement for any non-recurring costs associated with setting up delivery of the station's signal from the headend or receive facility to its subscribers, because MVPDs may reasonably incur such costs in order to continue to carry stations relocating as a result of a winning reverse auction bid. If a station is carried pursuant to a retransmission consent agreement, the issue of which party is responsible for delivery costs likely will be governed by the relevant contract. If, under the contract, the MVPD is responsible, it will be eligible for reimbursement of the non-recurring costs to set up delivery. If, under the contract, the broadcast station is responsible for delivery costs, it will be eligible for reimbursement of the non-recurring cost to set up delivery to the headend or receive facility if it was reassigned involuntarily. Further, the MVPD will be eligible for reimbursement of any non-recurring costs associated with setting up delivery of the signal from the headend or receive facility to its subscribers.

454. *Lost Revenues.* As discussed above, the Spectrum Act prohibits reimbursement for ''lost revenues.'' The

Commission defines ''lost revenues'' for purposes of reimbursement to include revenues that a station or MVPD loses as a direct or ancillary result of the reverse auction or the repacking process. For example, the Commission will not reimburse a station's loss of advertising revenues while it is off the air implementing a channel change resulting from the repacking process. In addition, the Commission will not reimburse any refunds a station is required to make for payments for airtime as a result of being off the air in order to implement a channel change. The Commission notes that stations can plan in advance for or mitigate the effects of temporary interruptions in service by, for example, alerting advertisers beforehand, declining to accept advance payments for airtime during relevant post-auction periods, and offering make-ups after the station returns to the air in lieu of refunds of advance payments. Similarly, with respect to MVPDs, the Commission will not provide reimbursement for lost advertising revenues or subscriber fees for any period of time a television station carried by the MVPD is off the air because of channel changes resulting from the reverse auction or repacking process.

d. Measures To Prevent Waste, Fraud, and Abuse

455. The Commission takes several additional actions to prevent waste, fraud, and abuse with respect to the Reimbursement Fund. The Commission adopts requirements for entities seeking reimbursement to provide a justification when their estimated costs exceed predetermined cost estimates. The Commission also requires entities to document their actual expenses and will conduct audits of, data validations for, and site visits to entities that receive disbursements from the Reimbursement Fund. In addition, to ensure transparency with respect to the Reimbursement Fund, the Commission will make available to the public estimated and actual cost information, as well as information regarding Reimbursement Fund disbursements. These measures accommodate the need to reimburse eligible broadcasters and MVPDs promptly, to impose rigorous accountability requirements, and to ensure transparency regarding the amount of money disbursed to eligible entities.

456. *Documentation Requirements.* The Commission establishes several requirements to ensure that disbursements based on estimated costs do not exceed actual costs. As discussed above, eligible broadcasters and MVPDs will be required to submit an estimated cost form and all actual cost information in order to receive any allocations from the Reimbursement Fund. These forms will include certifications that must be made by an owner or officer of the company under penalty of perjury under 18 U.S.C. 1001 in order to ensure that money from the Reimbursement Fund will be used only for eligible costs.

457. The Commission also requires eligible entities to submit detailed records documenting their actual costs, including all relevant invoices and receipts. In addition, the Commission requires broadcasters and MVPDs to submit progress reports, on a regular basis, to show how the disbursed money has been spent and what portion of their construction is complete. Further, the Commission adopts a document retention requirement for any entity seeking reimbursement. Although records of expenditures will have been submitted as a condition of receiving reimbursement, each entity must retain all relevant documents (e.g., records documenting the type of equipment a reassigned broadcaster replaced with new equipment) for a period ending 10 years after the date it receives its final payment from the Reimbursement Fund.

458. *Audits, Data Validations, and Site Visits.* The Commission concludes that audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement. Accordingly, the Commission, or a third-party audit firm on behalf of the Commission, may conduct audits of entities receiving disbursements from the Reimbursement Fund, and these audits may occur both during and following the three-year Reimbursement Period. Entities receiving money from the Reimbursement Fund must make available all relevant documentation upon request from the Commission or its contractor.

459. In addition to audits, the Commission prescribes data validations, which can be a more efficient way of verifying the accuracy of a disbursement. Data validations will allow the Media Bureau to ensure quickly the validity of specific claims on an entity's cost form so as to adequately protect the Reimbursement Fund while not inhibiting an entity's construction process. The Bureau can select specific claims for validation, and then a broadcaster or MVPD will be required to provide additional documentation or explanation to verify its claim for a particular type of equipment or service before it can be reimbursed for it. The Bureau or an authorized contractor also may conduct site visits to confirm that equipment paid for from the Reimbursement Fund has been deployed. Although the statutory reimbursement period is limited to three years, the Commission expects that the Media Bureau or a third-party auditor will continue to validate expenses after that period ends and, where appropriate, recover any money that should be returned, consistent with the Commission's obligation to recover improper payments. If any of these investigatory measures reveals evidence of intentional fraud, the Commission will refer the matter to its Inspector General's office or to law enforcement for criminal investigation, as appropriate.

e. Service Rule Waiver in Lieu of Reimbursement

460. The Commission concludes that broadcasters seeking to take advantage Section 6403(b)(4)(B) may submit a request for a waiver of any of its service rules, including a request to use a transmission technology other than the ATSC standard. This interpretation is supported by the language of Section 6403(b)(4)(B), which does not make reference to any specific service rules eligible for a waiver, instead referencing them generally.

461. The Commission delegates authority to the Media Bureau to evaluate and act on these service rule waiver requests on a case-by-case basis. The Commission directs the Bureau to apply its general waiver standard when considering such requests. The Media Bureau should consider the applicant's agreement to forego relocation costs as one factor weighing in favor of a waiver grant. The Commission also directs the Bureau to ensure that the applicant will protect against interference and provide at least one broadcast television program stream at no charge to the public, as required by Section 6403(b)(4)(B). The Commission notes that it has previously provided guidance on what constitutes ''broadcasting,'' although it does not foreclose alternative showings demonstrating compliance with the Section 6403(b)(4)(B) requirement that the waiver recipient will ''provide[ ] at least 1 broadcast television program stream on such spectrum at no charge to the public.'' *See* 47 U.S.C. 153(6); *In re Subscription Video,* 2 FCC Rcd 1001, 1006, para. 41 (1987). Delegating discretion to the Media Bureau to evaluate and act on waiver requests in accordance with these parameters is in line with the discretion afforded under

Section 6403(b)(4)(B) to grant waivers ''as [the Commission] considers appropriate.''

462. The Commission declines to grant waivers solely upon request without further analysis, as is advocated by some commenters. In evaluating a waiver request, the Media Bureau will need to determine whether the request meets the Commission's general waiver standard and complies with the statutory requirements pertaining to interference protection and the provision of one broadcast television program stream at no charge to the public. This will require a case-specific analysis of each waiver request and makes commenters' suggested approach unworkable.

463. The Commission also declines to permit stations that are not eligible for reimbursement to operate pursuant to a service rule waiver under Section 6403(b)(4)(B). Section 6403(b)(4)(B) expressly limits the availability of waivers to stations that request them in lieu of reimbursement of relocation costs. As discussed in this Order and under the plain reading of the Spectrum Act, only full power and Class A television stations assigned new channels in the repacking process, pursuant to Section 6403(b)(1)(B)(i), are eligible for reimbursement under Section 6403(b)(4)(A). Therefore, permitting a licensee to receive a service rule even if the station is not reassigned to a new channel in the repacking process, as advocated by some commenters, is both inconsistent with and outside the scope of the Spectrum Act. The Commission's decision, however, does not foreclose broadcasters from seeking waiver of its rules for stations that are not assigned new channels in the repacking process under its general waiver authority. For example, the Media Bureau has granted requests by several broadcast television licensees for authority to operate experimental digital facilities in order to evaluate the performance of non-ATSC transmission standards. Nothing in this Order is intended to modify the scope of these experimental authorizations or exclude these licensees, if otherwise eligible, from seeking a waiver under Section 6403(b)(4)(B)). Accordingly, only full power and Class A stations that are assigned new channels in the repacking process, and consequently are eligible for reimbursement, will be permitted to operate pursuant to a waiver granted under Section 6403(b)(4)(B). A full power or Class A station in a channel sharing arrangement may apply for a waiver under Section 6403(b)(4)(B) in cases where the sharer station has been assigned a new channel in the repacking process and is therefore eligible for reimbursement. The Commission adopts its proposal in the *NPRM* to require each licensee that is subject to a channel sharing arrangement and operates pursuant to a service rule waiver under Section 6403(b)(4)(B) to provide one broadcast television program stream at no charge to the public.

464. The Media Bureau will accept waiver requests filed pursuant to Section 6403(b)(4)(B) during a 30 day window commencing upon the date that the *Channel Reassignment PN* is released. Licensees may request that a waiver be granted on either a temporary or a permanent basis. A licensee will have 10 days following the grant of a waiver by the Media Bureau to notify the Media Bureau whether it accepts the terms of the waiver.

465. A licensee that is granted and accepts the terms of a waiver under Section 6403(b)(4)(B) will not qualify for reimbursement, regardless of the duration of the waiver. Once a licensee accepts the terms of its waiver under Section 6403(b)(4)(B), a licensee will not later become eligible for reimbursement if its waiver no longer is effective because, for example, it expires, it is canceled for failure to comply with any terms or conditions of waiver, or the licensee voluntarily chooses to broadcast in accordance with current Commission rules. However, licensees are required to meet all requirements for obtaining reimbursement established by the Commission, such as filing a timely estimated cost form, until they are granted and accept the terms of their waiver. Compliance with such reimbursement-related requirements is necessary to ensure timely reimbursement in the event a station's waiver request is denied or the station declines to accept the terms of a waiver grant. If a waiver request is granted and the station accepts the terms of the grant, the station will no longer be subject to reimbursement-related requirements. Furthermore, unless otherwise instructed by the Media Bureau, licensees that are granted and accept the terms of a waiver under Section 6403(b)(4)(B) or licensees with a pending waiver application must comply with all filing and notification requirements, construction schedules, and other post-auction deadlines, established in this Order.

f. Other Reimbursement Issues

466. *Reimbursement Limit.* The Commission disagrees with commenters who argue that the $1.75 billion Reimbursement Fund serves as a limit on the Commission's repacking authority. While the Commission's goal in administering the Reimbursement Fund will be to reimburse all eligible costs reasonably incurred, the statute on its face does not condition the Commission's repacking authority on its ability to do so. Rather, Section 6403(b)(4)(A) requires only that the Commission ''reimburse costs reasonably incurred'' by eligible broadcasters and MVPDs ''from amounts available'' in the Fund. By contrast, Congress authorized reimbursement of the relocation costs of channel 37 incumbent users ''provided that all such users can be relocated and that the total relocation costs of such users do not exceed $300,000,000.'' Congress's determination not to similarly tie reimbursement of broadcaster relocation costs to the total amount of those costs supports its reading of Section 6403(b)(4)(A). Congress explicitly placed other financial conditions on the Commission in the Spectrum Act as well, such as establishing a minimum proceeds requirement for the forward auction. Congress did not, however, require that that the forward auction proceeds be sufficient to cover the total relocation costs that might be eligible for reimbursement. On the contrary, it required that such proceeds be sufficient to cover, *inter alia,* ''the estimated costs for which the Commission is required to make reimbursements under subsection (b)(4)(A).'' (Spectrum Act Section 6403(c)(2)(B)(iii). *See, e.g., Wolverine Power Co.* v. *FERC,* 963 F.2d 446, 451 (D.C. Cir. 2010) (''Congress knew how to draft an enforcement provision applicable to a 'licensee' but not a 'person.' Accordingly, we believe that, in enacting section 31(c), Congress meant what it said.'')). As noted below, however, the Commission has no reason to believe that $1.75 billion will be insufficient to cover broadcasters' total relocation costs. The Commission will seek to minimize repacking costs, and stay within the $1.75 billion Congress provided, by optimizing channel assignments at the conclusion of the auction.

467. The Commission also rejects assertions that the reverse auction will not be ''voluntary'' within the meaning of the statute if broadcasters might incur out-of-pocket relocation costs. As directed by the Spectrum Act, incentive auction participation for broadcasters will be ''voluntary.'' Spectrum Act Section 6403(a). However, the Spectrum Act also grants the Commission broad authority to reorganize the broadcast television spectrum in order to carry out the incentive auction, subject to the ''all

reasonable efforts'' mandate. Spectrum Act Section 6403. Participation in repacking is not voluntary; to the contrary, the Spectrum Act expressly precludes broadcasters from exercising rights that would otherwise be available to them under Section 316 to ''protest'' license modifications made pursuant to Section 6403(b). Spectrum Act Section 6403(h). As discussed above, the Commission does not interpret the Spectrum Act to insulate broadcasters from any and all uncertainty in the repacking process in derogation of the statute's other objectives. Likewise, the Commission does not interpret the statute to require it to insulate broadcasters from the mere possibility of out-of-pocket expenses in order to ensure that their choice of whether or not to participate in the reverse auction is voluntary. Nor is there any evidence in the record to suggest that such a possibility would have a coercive effect.

468. The Commission also concludes that conditioning the closing of the auction on the sufficiency of the Reimbursement Fund to cover all reimbursable relocation costs or delaying the closing of the auction until the Fund is determined to be sufficient to cover all such costs would jeopardize other objectives in the Spectrum Act. As set forth above, the repacking approach the Commission adopts provides speed and certainty by finalizing the channel assignment for each station that will remain on the air only after the final stage rule is satisfied and bidding stops (but before the incentive auction concludes). By imposing another constraint on repacking that is not authorized by the statute, NAB's proposed ''hold-harmless'' policy would impinge on the speed and certainty required for successful implementation of the incentive auction and would prevent an efficient final channel assignment scheme. In addition, contrary to some commenters' arguments, the Commission cannot provide additional funding in order to guarantee that all broadcasters are fully reimbursed. Section 6402 of the Spectrum Act expressly provides for a deposit of no more than $1.75 billion into the Reimbursement Fund. Providing additional funding would be contrary to the express language of the Spectrum Act.

469. In addition, it will not be possible for the Commission to estimate the precise amount of relocation costs until all eligible broadcasters and MVPDs submit their individual estimates three months after the *Channel Reassignment PN* is issued. Before that, the Commission will not know which reassigned stations will have to replace equipment rather than reusing it, or to what extent MVPDs will incur expenses associated with fulfilling the carriage rights of reassigned broadcasters. Nor will there be any basis to estimate the number of stations that will forego cost reimbursement by taking advantage of the flexible use waiver option under Section 6403(b)(4)(B) of the Spectrum Act.

470. The Commission emphasizes that it has no reason, at this time, to believe that the Fund will be insufficient to cover all eligible relocation costs. Moreover, the Commission plans to take appropriate measures to disburse funds from the Reimbursement Fund as fairly and efficiently as possible. As indicated above, after the final stage rule is satisfied and the bidding stops, the Commission intends to optimize the final broadcast channel assignments to minimize relocation costs. The Commission also notes that reassigned broadcasters will have the opportunity, post-optimization, to seek an alternate channel in the interest of minimizing relocation costs. The Commission has discussed at length above the various measures it adopts to ensure that the Reimbursement Fund is used as efficiently as possible, and addresses below cost mitigation measures that also may help to reduce demands on the Reimbursement Fund. If future developments suggest that $1.75 billion will be insufficient to cover all eligible costs, the Commission delegates authority to the Media Bureau to develop a prioritization scheme for reimbursement claims.

471. *Equipment Repurposing.* All entities seeking reimbursement from the Reimbursement Fund should reuse their own equipment, to the extent possible, rather than obtaining new equipment paid for by the Reimbursement Fund. To the extent eligible broadcasters and MVPDs seek reimbursement for new equipment, they must provide a justification when submitting their estimated cost form as to why it is reasonable under the circumstances to purchase new equipment rather than modify their corresponding current equipment in order to change channels or to continue to carry the signal of a broadcaster that changes channels. The Commission also encourages winning reverse auction bidders to repurpose their equipment to the extent possible. In addition, the Commission encourages reassigned broadcasters to seek out previously used equipment no longer needed by other stations, and to make any equipment that is no longer needed available for use by another entity.

472. Unlike the DTV transition, in which there was little demand for used analog equipment, following the incentive auction broadcasters could obtain used digital equipment, either on the secondary market or through an equipment swap, that is significantly less expensive than new equipment. In addition to cost savings, repurposing equipment could help address any potential equipment shortages. A reassigned broadcaster that cannot retune its transmitter to accommodate its new channel position may be able, for example, to sell the transmitter directly to another broadcaster or to an entity that purchases used equipment for resale. A broadcaster also may be able to purchase a previously used transmitter that works on its newly assigned channel. In addition, broadcasters in the same geographic region may consider swapping equipment that is no longer needed or usable on their newly assigned channels. The Commission recognizes that there may be significant costs associated with transporting used equipment and that cost savings may be achievable only if appropriate used equipment is available locally. The Commission encourages broadcasters and MVPDs that cannot sell or swap unneeded equipment to consider donating it to an educational institution or other charitable organization. As described above, the Commission will use site visits to validate that entities that received reimbursement for purchasing new equipment actually have deployed that new equipment.

473. *Equipment Sharing.* The Commission encourages broadcasters to consider ways in which they may save expenses by sharing equipment. For example, it may be possible for broadcasters to share an antenna or other facilities in a manner that reduces the participating stations' overall relocation costs or contributes to more efficient use of the broadcast spectrum. In particular, the Commission encourages broadcasters to consider whether joint use of a broadband antenna would be possible and would represent an overall cost savings as compared to the purchase of separate antennas for each of the participating stations.

474. *Bulk Purchasing.* At this time, the Commission declines to arrange for the bulk purchase of equipment or services or to oversee any such effort. The record does not provide clear information regarding whether bulk purchasing would provide substantial benefits, in part because certain equipment, such as antennas, must be specialized for particular channels, locations, and coverage areas and because many broadcasters have

existing relationships with equipment vendors. It may be useful for broadcasters and MVPDs to consider whether these kinds of arrangements could generate cost savings and result in more efficient use of the $1.75 billion Reimbursement Fund.

D. Transition Procedures for Other Services and Unlicensed Operations

1. LPTV and TV Translator Stations

475. The Commission modified its displacement rules with respect to operating LPTV and TV translator stations that are displaced as a result of the incentive auction or the repacking process. After the release of the *Channel Reassignment PN* and after eligible full power and Class A television stations have an opportunity to file construction permit applications for their new facilities, including an alternate channel or an expanded facility, the Media Bureau will announce a limited window for operating LPTV and TV translator stations to submit displacement applications. This filing window will be open only to operating stations that (1) are displaced by a full power or Class A television station as a result of the incentive auction or the repacking process, (2) will cause interference to or receive interference from frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) are licensed on frequencies that will serve as part of the 600 MHz Band guard bands. The Commission delegated authority to the Media Bureau to announce the terms of the limited displacement window consistent with the approach outlined above.

476. The Commission rejected calls to allow displacement relief applications to be filed at any time without requiring stations to wait for a window finding that accepting displacement applications during a limited window will ensure that all affected stations are given an equal opportunity to obtain a new channel and will avoid the ''race to the courthouse'' that occurs with first-come, first-served filing opportunities.

477. The Commission found that the public interest would be served by allowing LPTV and TV translator stations with mutually exclusive displacement applications to explore engineering solutions or agree on a settlement to resolve the mutual exclusivity. The Commission delegates authority to the Media Bureau to announce the terms of the engineering solution or settlement opportunity that will be provided to mutually exclusive displacement applications filed by LPTV or TV translator stations as a result of the auction or repacking process, consistent with the Commission's existing rules, including the monetary limits on settlement payments and reporting requirements. This approach will expedite the displacement process and prevent processing delays that could result in stations having to go silent. Should no resolution of mutually exclusive applications occur through an engineering solution or settlement, the Commission grants a selection priority to the licensees of any displaced DRTs. This means that the DRT displacement application will be processed first and, if granted, will result in the dismissal of all pending displacement applications that are mutually exclusive with it. The Commission concludes that DRT displacement applications should be given priority over mutually exclusive displacement applications filed for LPTV and other TV translator stations in order to help preserve the existing services of full power stations. Should two or more stations remain mutually exclusive after the application of the selection priority, the Commission will use an auction as a last resort to resolve remaining displacement groups.

478. The Commission rejected a proposal to grant a selection priority to the displacement applications filed by TV translator stations that are operating on an NCE basis and are eligible to receive a community service grant from the Corporation for Public Broadcasting finding that many LPTV stations and other TV translator stations also have important public service missions, and there was not evidence that Congress intended for CPB-Qualified TV translators to receive preferential treatment over other low power stations. Further, stations are permitted to change their designation from ''low power television'' to ''translator'' without prior Commission approval; thus, stations could change their designation to gain the selection priority if the Commission granted the proposal.

479. In addition, the Commission declined to adopt the proposal in the NPRM to provide a selection priority to displacement applications filed by stations that offer the only local, over-the-air television service in their market and the proposal made by some commenters to prioritize stations that provide network service to their community. The Commission's longstanding policy has been to avoid involvement in the format and other content choices of licensees based on First Amendment concerns, and the Commission concluded that adoption of these proposals would be inconsistent with that policy.

480. The Commission announced that it intended to initiate the a rulemaking proceeding (the LPTV/TV Translator Proceeding) shortly after the release of the Report and Order to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the incentive auction and the repacking process, and that it intended to issue a Report and Order prior to the commencement of the incentive auction. First, the LPTV/TV Translator Proceeding will consider whether to modify the current September 1, 2015 deadline for LPTV stations to convert to digital service. Second, the LPTV/TV Translator Proceeding will consider whether to permit LPTV and TV translator stations to participate in channel sharing arrangements after the conclusion of the reverse auction. Third, the Commission will consider in the LPTV/TV Translator Proceeding whether to create a new digital replacement translator service for stations that experience losses in their pre-auction service areas. Fourth, the Commission will explore ways of maximizing the number of channels available to LPTV and TV translator stations in the remaining television bands. Finally, the Commission will invite input on any other measures it should consider to further mitigate the impact of the auction and repacking process on low power stations.

481. The Commission declined to adopt several other proposals finding that these proposals either are not feasible at this time or would conflict with the other goals of the incentive auction. The Commission rejected the proposal to set aside channels 2–4 for the exclusive use of LPTV or TV translator stations finding that such a set-aside would eliminate available channels that otherwise could be assigned to full power and Class A stations and would require relocating a number of full power and Class A stations to different channels and would also be inconsistent with the goal to allow market forces to determine the highest and best use of spectrum. The Commission also rejected a proposal to provide displaced LPTV stations with cable carriage rights at their new location or channel pointing out that no commenter maintains that such action would be within the Commission's statutory authority and, regardless, the Commission declined to grant carriage rights beyond those required under the Communications Act.

482. The Commission concluded that new 600 MHz wireless licensees must provide LPTV and TV translator stations advance notification if they intend to

commence operations in areas of their geographic licenses where there is a likelihood of receiving harmful interference from an LPTV or TV translator station. After receiving such notification, the LPTV or TV translator station must cease operations or reduce power in order to eliminate the potential for harmful interference to the operations of the 600 MHz licensee.

483. The 600 MHz Band licensee must provide notice to the LPTV or TV translator licensee in the form of a letter, by certified mail, return receipt requested. The notice must indicate the date that the 600 MHz Band licensee intends to commence operations, and must be delivered to the LPTV or TV translator licensee not less than 120 days in advance of that date. The LPTV or TV translator licensee must cease operating or reduce power before the commencement date set forth in the notice. This obligation will apply even if the LPTV or TV translator station has submitted a displacement application that has not been granted. LPTV and TV translator stations may continue operating on channels in the 600 MHz Band until a licensee wireless licensee commences operations pursuant to the notification process the Commission is adopting. The Commission concluded that it is appropriate to adopt more definitive channel clearing obligations for LPTV and TV translator than were implemented in the 700 MHz transition in order to ensure that new 600 MHz Band licensees will have prompt and efficient access to their spectrum. This approach will provide certainty to new licensees, helping to ensure the success of the auction and a smooth transition.

484. The Commission will require that LPTV and TV translator stations operating on channels that include frequencies repurposed for 600 MHz Band guard band use (including the duplex gap) cease operations on those frequencies. The Commission rejected a proposal that LPTV stations be allowed to continue operating on any channels allocated as guard bands finding that the 600 MHz Band Plan designates spectrum to serve as guard bands, and consistent with its proposal in the NPRM, only low power device operations will be permitted in those bands and make this spectrum available for innovative unlicensed use nationwide. In order to fully transition this spectrum for unlicensed use on a nationwide basis, on a nationwide basis, all LPTV and TV translator licensees operating in spectrum repurposed for 600 MHz Band guard band use will be required to cease operating on that spectrum no later than the end of the post-auction transition period (i.e., 39 months after the issuance of the *Channel Reassignment PN*). In addition, as set forth above, an LPTV or TV translator licensee operating in spectrum reserved for the guard bands will be required to cease operating prior to that date if any 600 MHz Band licensee has notified them that their operations would be likely to cause harmful interference in areas where the wireless licensee intends to commence operations. LPTV stations that currently operate on channels that include frequencies that are repurposed as 600 MHz Band guard bands will be eligible to file an application for a new channel in the displacement window.

2. Television Fixed Broadcast Auxiliary Stations

485. The Commission will continue to license fixed BAS on a secondary basis in the television bands following the incentive auction. As a result of the incentive auction and repacking process, BAS operators will be required to vacate the 600 MHz Band no later than the end of the post-auction transition period. Following the issuance of the *Channel Reassignment PN,* BAS operations will have significant advance notice of the channels they may need to vacate, which will assist them in advance planning for that process.

486. *Notification Procedures for Operations in the 600 MHz Band and the Post-Auction Television Bands.* The Commission will continue to license fixed BAS on a secondary basis in the UHF spectrum that remains allocated and assigned to full power television services nationwide, it will require all fixed BAS stations to cease operating and relocate from the 600 MHz Band no later than the end of the post-auction transition period (i.e., 39 months after issuance of the *Channel Reassignment PN*). Additionally, before the end of this transition period, if a new 600 MHz licensee intends to commence operations, the 600 MHz licensee must provide 30 days' advance notice to the BAS operator that it intends to commence operations and that the BAS station is likely to cause harmful interference to those operations. The BAS operator must cease operating on that channel within 30 days of receiving notice. The notice from the 600 MHz licensee to the BAS licensee must take the form of a letter, by certified mail, return receipt requested. A 30-day notice period will serve the public interest by both protecting BAS operations and speeding the deployment of new broadband wireless services.

487. In addition, as a secondary service, BAS may not cause interference to repacked television stations. Should a repacked broadcast television licensee in the 600 MHz Band or the repacked UHF Band experience harmful interference from a BAS licensee, the BAS licensee must, pursuant to the Commission's rules, immediately cease operations and may not resume operations until the interference problem is resolved.

488. *Operations in the Guard Bands.* The Commission also will require that BAS operations on channels that include frequencies that will be reserved for guard bands pursuant to this Order cease operations on those channels. The 600 MHz Band includes guard bands (including the duplex gap), and consistent with the Commission's proposal in the *NPRM,* we will permit only low power operations in those bands. All BAS operations in spectrum reserved for guard bands will be required to cease operating on that spectrum no later than the end of the post-auction transition period (i.e., 39 months after the issuance of the *Channel Reassignment PN*).

3. Television White Space (TVWS) and Unlicensed Device Operations

489. *Operations in the Post-Auction Television Bands.* The Commission will continue to allow television white space (TVWS) devices to operate under the current part 15 rules in the spectrum that remains allocated and assigned for TV broadcast services following the incentive auction. The Commission notes that, as the television bands are repacked, there are likely to be fewer available channels for TVWS devices in this spectrum and it intends to designate one unused TV channel in each area for shared use by TVWS devices and wireless microphones.

490. *Operations in the 600 MHz Band Guard Bands.* The Commission will initiate a separate 600 MHz and TVWS Part 15 Proceeding in the near term to develop the technical parameters for unlicensed operations in the spectrum that, the incentive auction, will serve as 600 MHz Band guard bands—specifically, the bands between broadcast television and wireless services, the duplex gap, and bands adjacent to channel 37.

491. *Operations on Unused Television Channels Currently Designated for Wireless Microphones.* The Commission will no longer require that up to two unused channels in any area be designated exclusively for wireless microphone operations. It will, however, continue to prohibit TVWS devices from operating on these

channels until our rules to improve our TV bands databases to provide for more immediate protection of registered wireless microphone operations become effective, after which time TVWS devices potentially could operate on any of these channels. The Commission also intends to designate one television channel for shared use by wireless microphones and TVWS devices.

492. *Operations in the 600 MHz Band.* The Commission will permit the continued operation of TVWS devices on repurposed spectrum except in those areas in which a 600 MHz Band licensee commences operations. After obtaining their licenses the Commission expects that 600 MHz Band licensees will be commencing operations at different places at different times depending on their business plans and other factors. The Commission is persuaded by those that unequivocally oppose unlicensed use of this repurposed spectrum following the incentive auction. Since TVWS devices can operate only on channels identified in the TV bands databases, these databases can serve to ensure that unlicensed operations will no longer occur on a channel on which a licensee has commenced service. When a 600 MHz Band licensee plans to commence operations on frequencies that include channels available for unlicensed operations under the rules for TVWS devices, that licensee can notify any of the TV bands database Administrators when and where it plans to commence operations. Through these actions, the TV bands databases would be updated and would preclude unlicensed operations in those areas.

4. Low Power Auxiliary Station and Unlicensed Wireless Microphones

493. The Commission is adopting several rule changes that address operations of licensed Low Power Auxiliary Station (LPAS) and unlicensed wireless microphones in the post-auction television bands, as well as the operation of these devices in the 600 MHz Band guard bands once the technical rules are established in a separate rulemaking. Wireless microphone operators today rely on UHF band spectrum to provide important broadcasting and production services, as well as other services, and will need some time to transition many of their operations to other spectrum bands. Accordingly, the Commission will allow wireless microphone operations in the post-auction television bands, 600 MHz Band guard bands, and the 600 MHz Band spectrum repurposed for wireless services during the post-auction transition. The transition period will be helpful in addressing the important needs of wireless microphone users in the near term as future technologies are developed for accommodating their needs through a combination of more efficient use of post-auction television band spectrum as well as use of spectrum outside of the current UHF television band.

494. *Operations in the Post-Auction Television Bands.* Licensed LPAS and unlicensed wireless microphone operations may continue to operate on available unused television channels under the revised rules for co-channel operations. The Commission notes that, with the post-auction transition and the repacking of television stations (including relocated full power stations, LPTV, and BAS), the particular channels available for wireless microphone users may change, and these users will need to adjust their operations accordingly. In addition, the Commission intends to designate one television channel following the auction for shared use by wireless microphones and TVWS devices, and note that on any of the television channels available for TVWS devices, wireless microphone users can obtain protection from interference from TVWS devices by registering in the TV bands databases.

495. *Operations in the 600 MHz Band Guard Bands.* The Commission also will allow wireless microphone users to operate on the spectrum established for 600 MHz Band guard bands (including the duplex gap) to the extent that those channels are available for use under the revised separation distance rules for co-channel operation with TV broadcast stations. Wireless microphone users generally will be permitted to operate on an unlicensed basis in the guard bands, while broadcasters and cable programming networks operating wireless microphones on a licensed basis will be permitted to obtain interference protection from unlicensed devices in a portion of the duplex gap at specified times and locations, on an as-needed basis. Wireless microphone use in the guard bands will be subject to any rule revisions that the Commission later adopts in the planned 600 MHz and TVWS Part 15 Proceeding, which will develop rules for unlicensed and other low power operations in the guard bands that protect licensed operations outside of the guard bands.

496. *Operations on Unused Television Channels Currently Designated for Wireless Microphones.* The Commission will no longer continue to designate up to two unused television channels in any area exclusively for wireless microphone operations, although it does intend to designate one unused television channel for shared use by wireless microphone and TVWS devices. To help ensure that licensed wireless microphone operators can obtain access to available television channels they need free of interference from TVWS devices, in our planned 600 MHz and TVWS Part 15 Proceeding, the Commission will be seeking comment on ways we can update the rules for TV bands databases to provide for more immediate reservation of unused and available channels in the television bands. However, for some period of time following the incentive auction, the two channels currently available exclusively for wireless microphones may, depending on the particular location, continue to be unused by either broadcasters or 600 MHz Band licensees. To the extent that one or both of these channels remain available for wireless microphones in particular locations, we will continue to prohibit TVWS devices from operating on these channels until the Commission's rules improve our TV bands database registration process (providing for more immediate protection from interference by TVWS devices) become effective. After that time, any available channels could be used by either wireless microphones or TVWS devices.

497. *Operations in the 600 MHz Band.* Winning forward auction bidders will not have been granted their 600 MHz Band licenses immediately following the incentive auction, and may not commence operations for some period of time. In addition, as wireless microphone users and manufacturers point out, many wireless microphone users have recently incurred substantial costs associated with buying new UHF band wireless microphone equipment following their relocation outside of the 700 MHz Band. The Commission finds that during the post-auction transition period the public interest will be served by allowing wireless microphone operations in the repurposed spectrum.

498. The Commission will permit wireless microphone users to continue to operate in the 600 MHz Band during the post-auction transition period subject to certain conditions designed to protect the 600 MHz licensees' primary rights to make full use of their licensed spectrum. Specifically, for this transition period, to the extent that either licensed LPAS or unlicensed wireless microphone users operate in the 600 MHz Band, consistent with their secondary or unlicensed status they will not be entitled to any interference protection from operations of the primary 600 MHz licensees. The Commission also requires that wireless microphone users cease any operations in the 600 MHz Band if their operations

cause harmful interference to any 600 MHz licensee's operations. Finally, the Commission established a hard date by which all wireless microphone operations must be transitioned out of the 600 MHz Band, requiring that all such operations cease no later than the end of the post-auction transition period (i.e., 39 months after the issuance of the *Channel Reassignment PN*). The Commission finds that establishing a hard date by which all licensed and unlicensed microphone operations must cease operations provides needed certainty and clarity that wireless microphone operators cannot continue operations in spectrum assigned to wireless licensees and helps ensure that wireless providers can operate without interference.

499. In taking these actions, the Commission seeks to accommodate the needs of wireless microphone users in the near term, providing some necessary time for transitioning operations out of the repurposed 600 MHz Band, while the Commission protect the primary rights of 600 MHz licensees. Considering the various types of wireless microphone users, and the various types of wireless microphone devices in use today (including devices that can only operate on particular frequencies in the UHF band), some time is needed in order to obtain new equipment and transition wireless microphone users off of the frequencies that are being repurposed for 600 MHz Band service, whether to other available frequencies in the UHF band (i.e., the post-auction television bands or the 600 MHz Band guard bands) or to spectrum outside of the UHF band.

V. Post–Transition Regulatory Issues

A. Broadcast Issues

1. Media Ownership Rules and Diversity

a. Media Ownership Rules

500. The Commission will grandfather existing station combinations previously approved by the Commission that otherwise would no longer comply with the media ownership rules as a result of the reverse auction. *See Review of the Commission's Regulations Governing Television Broadcasting,* MM Docket No. 91–221, Report and Order, 14 FCC Rcd 12903, 12932–33, para. 64 (1999) (holding that, if an entity acquires a duopoly under the Commission's current local television ownership rule, ''it will not later be required to divest if the number of operating television voices within the market falls below eight or if the two merged stations subsequently are both ranked among the top four stations in the market; however, a duopoly may not automatically be transferred to a new owner if the market does not satisfy the eight voice/top four-ranked standard''). Absent a waiver of the rules, however, the Commission will not accept channel sharing bids in the reverse auction that would cause a media ownership rule violation by a party to the channel sharing arrangement based on the rules and facts as they exist at the time the application to participate in the auction is filed. Specifically, the Commission will not accept channel sharing bids that would trigger a violation of the local television multiple ownership rule, the newspaper/broadcast cross-ownership rule, or the radio/television cross-ownership rule by a channel sharing partner. The Commission will accept reverse auction bids that would trigger a violation of the national television multiple ownership rule, which limits a broadcaster's national audience reach to 39 percent, subject to a ''UHF Discount'' attributing only 50 percent of the TV households in a DMA to UHF stations. Such a violation potentially could be caused by the relocation of a sharee station if the contour of the station newly overlaps or encompasses any other media outlets in which the licensee of the station has an attributable ownership interest. Because the licensee in this situation would exercise control over the triggering of a potential violation of the Commission's rules and because the licensee would have the ability to determine prior to the auction that such a violation would occur, grandfathering would be inappropriate and contrary to the public interest. The Commission does not believe this limitation on grandfathering will unduly discourage reverse auction participation. In addition, the Commission agrees with commenters that it is appropriate to keep its grandfathering policy simple to avoid unnecessary disruption to the broadcast industry.

501. The Commission rejects arguments that grandfathering should not be permitted because it would ''irreparably harm'' ownership diversity. While the Commission acknowledges concerns about the potential impact of the auction on broadcast ownership diversity, it concludes that grandfathering existing combinations that have been approved is justified in these unique circumstances. The Commission structures transitional procedures as appropriate in light of the specific rule changes at issue, whether the changes could have been anticipated when the combinations were acquired, reliance on existing rules, and the nature and degree of disruption that would be caused by requiring immediate divestitures. Broadcasters have made substantial long-term investments in their station combinations in reliance on Commission approval of their station acquisitions and its multiple ownership rules. It would be inequitable if owners of existing combinations were negatively affected if circumstances that they could not have anticipated and could not control subsequently change such that the combination no longer complies with the rules. For similar reasons, the Commission rejects NHMC's proposal that it review every combination ''on a case-by-case basis, upon completion of the auction process'' to assess whether the combination serves the Commission's public interest goals, including promoting ownership diversity, in the post-auction environment. NHMC's proposal would undermine the certainty regarding the auction and the repacking processes that is critical to the overall success of the incentive auction.

502. Upon the sale of a grandfathered station combination, the Commission will require the new owner to comply with the media ownership rules in place at the time of the transaction or obtain a waiver. The Commission rejects Tribune's proposal to allow grandfathered combinations to be sold intact because it is inconsistent with prior FCC practice, and is are not persuaded that it should depart from current policy here.

b. Diversity of Media Ownership

503. As an initial matter, the Commission emphasizes that all qualified broadcasters will have an opportunity to enter the reverse auction. Consistent with the Spectrum Act, auction participation will be voluntary: No broadcasters will be compelled to participate. The Commission concurs with commenters about the importance of outreach regarding the incentive auction to broadcasters, including those owned by minorities or females. As noted above, the Commission has conducted numerous workshops and other direct outreach efforts to help broadcasters, including those that are minority- or female-owned, make informed business decisions about whether and how to participate in the reverse auction. As broadcast representatives have emphasized repeatedly, access to capital is an ongoing challenge for minority and female broadcasters. Voluntary participation in the reverse auction, via a channel sharing, UHF-to-VHF, or high-VHF-to-low-VHF bid, offers a significant

and unprecedented opportunity for these owners to raise capital that may enable them to stay in the broadcasting business and strengthen their operations. The Commission considers fostering minority and female ownership of broadcast stations an important goal, and its efforts to promote such ownership will continue after the auction and the repacking process.

504. The Commission rejects suggestions to assess the impact of the auction on minority and female ownership levels by collecting from all auction participants the same ownership information it already collects through its biennial ownership report forms. Although measuring the impact of the auction on broadcast ownership diversity is important, the additional data collection efforts proposed would replicate existing efforts and thus impose an unnecessary burden. Its required biennial ownership reports provide extensive information about the ownership structure of each commercial broadcast licensee, including information about minority and female ownership status. The collection of data biennially and the use of a uniform ''as of'' date give the Commission successive ''snapshots'' of the status of minority and female ownership in the industry on a fixed, periodic schedule. This information provides a basis for analyzing ownership trends within the broadcast industry.

2. Channel Sharing Operating Rules

505. The Commission will require all channel sharing agreements (CSAs) to include certain key provisions. Specifically, in addition to the existing requirement regarding access to shared channel capacity, CSAs must contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and (4) termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA. While channel sharing partners will be required to address these matters in their CSAs, they may craft provisions as they choose, based on marketplace negotiations, subject to pertinent statutory requirements and the Commission's rules and regulations. CSAs also must include a provision affirming compliance with the channel sharing requirements in the Report and Order, the Channel Sharing Report and Order, and the Commission's rules. The Commission reserved the right to review CSA provisions and require modification of any that do not comply with these requirements or the Commission's rules.

506. The Commission announced that, should a channel sharing station's license be terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel. The rights to the terminated portion of the shared channel will revert to the Commission for reassignment. The Commission will condition the final award of the rights to the terminated portion of the shared channel on the new channel sharing licensee agreeing to the terms of the existing CSA. If the new channel sharing licensee and the remaining channel sharing station(s) agree to renegotiate the terms of the existing CSA, the agreement may be amended, subject to Commission approval. If the negotiations to amend the agreement are unsuccessful, the remaining station or stations may continue to operate while the channel remains a ''shared'' allocation and subject to reassignment. The Commission will allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act, the rules, and the requirement that the assignee or transferee comply with the applicable CSA.

507. The Commission declined to adopt a rule that would make channel sharing licensees jointly responsible for compliance with specific rules. The Commission received no comment in response to the inquiry in the NPRM regarding whether requiring joint responsibility with respect to certain technical requirements is necessary or appropriate, and the record in this proceeding does not support a change to the existing policy.

508. The Commission adopted rules to govern NCE stations operating on reserved channels that choose to channel share. Specifically, an NCE licensee operating on a reserved channel, whether it relinquishes its channel in order to share a non-reserved channel or agrees to share its reserved channel with a commercial station, will retain its NCE status and must continue to comply with the rules applicable to NCE licensees. In either case, the NCE station's portion of the shared channel (which, at a minimum, must enable the broadcast of one SD programming stream) will continue to be reserved for NCE-only use. Further, a reserved-channel NCE sharing station may assign its license only to a qualified NCE entity. Similarly, if a reserved-channel NCE sharing station's license is relinquished or terminated, only another entity meeting the NCE eligibility criteria will be considered for reassignment of the license.

509. The Commission adopted rules governing the power levels at which stations may operate and the applicable MVPD carriage rights when both a full power and a Class A station participate in a channel sharing agreement by allowing a Class A station to operate under the Part 73 rules governing power levels and interference if it shares a full power television station's channel. Similarly, a full power station sharing a Class A station's channel must operate under the Part 74 power level and interference rules.

510. The Commission interpreted the Spectrum Act to entitle a Class A station that channel shares with a full power sharer only to those carriage rights to which a Class A station would be entitled at the shared location were it not sharing. The Commission also clarified that a full power sharee, whether a commercial or NCE station, that channel shares with a Class A licensee will have the same carriage rights at the channel sharing location that a non-channel sharing full power station would have at that location. In addition, low power stations, including Class A stations, lack statutory mandatory carriage rights on DBS systems, and that lack of such rights will continue when a Class A station channel shares with a full power station.

511. The Commission noted that, as a result of channel sharing with a Class A station and operating with the Class A station's reduced power level, a full power station may find it needs to use alternative means, such as fiber or microwave, to deliver a good quality signal to a cable system headend it previously could reach with its over-the-air signal. This change, however, will not affect its right to demand carriage throughout its market. Similarly, NCE stations that share with a Class A station will retain the ability to cure their signal and secure must-carry rights, but only with respect to headends located within 50 miles of their communities of license, or located within their noise limited service contours—the same rights they possess today.

B. 600 MHz Band Technical and Service Rules

1. Technical Rules

a. Out-of-Band Emission Limits

512. Four interference scenarios exist that relate to OOBE limits: (1) Interference to adjacent 600 MHz Block operations; (2) interference to adjacent Lower 700 MHz Band operations; (3) interference to television operations; and (4) interference to channel 37 operations.

513. *Interference to Adjacent 600 MHz Block Operations.* We adopt 47 CFR 27.53(g) of the Commission's rules, which includes OOBE attenuation of $43+10*\log_{10}(P)$ dB and the associated measurement procedure, to address interference between adjacent blocks within the 600 MHz Band, and between 600 MHz Band spectrum and adjacent bands. This OOBE limit is commonly employed in other commercial wireless services bands and it has generally been found to be adequate in preventing harmful interference to adjacent spectrum blocks operations. Additionally, it is beneficial to maintain comparable emissions limits among commercial bands with similar services so as not to disadvantage one band over another.

514. *Interference to Adjacent Lower 700 MHz Band Operations.* The upper end of the 600 MHz Band uplink band is adjacent to the lower portion of the Lower 700 MHz Band, which is also being used for mobile uplink operations. As discussed above, the interference environment between these two bands will be similar to interference within either band and the OOBE limits we are adopting will protect adjacent Lower 700 MHz Band because their operations are harmonized.

515. *Interference to Television Operations.* Under the 600 MHz Band Plan, the lower end of the 600 MHz Band downlink band will likely be adjacent to broadcast television operations, with a guard band between the two services. Most parties commenting on this issue support the Commission's proposal to adopt the Lower 700 MHz Band OOBE requirements. However, IEEE 802 and the Wi-Fi Alliance express concern that emissions from 600 MHz Band uplinks may cause interference to nearby television receivers and that the Commission should regulate the OOBE limits of all newly licensed devices (e.g., mobile broadband handsets) to ensure that we protect all authorized devices. Under the 600 MHz Band Plan, mobile uplink operations are not adjacent to television broadcast spectrum and will therefore not interfere with television receivers.

516. Based on our technical analysis, this OOBE requirement, in conjunction with the guard bands we establish, will prevent harmful interference to television and channel 37 operations. Accordingly, the proposed OOBE limits for the 600 MHz Band, with a required guard band, will address interference to all television operations. We note that in the event that a specific incidence of harmful interference occurs, we may impose stricter emissions limits as a remedy. By applying the same OOBE limits as currently exist between the Lower 700 MHz Band and television stations, 600 MHz Band licensees will provide similar protection as exists today.

517. *Interference to Channel 37 Operations.* Depending on the total amount of spectrum made available for flexible use, we may permit either television stations, and/or 600 MHz Band base stations to operate adjacent to channel 37 operations. Television stations currently operate adjacent to channel 37 without any guard bands at very high power, with no reported problems, which indicates that the television stations' OOBE and power limits are sufficient to protect channel 37 operations. Both of these current limits are higher than those adopted for the 600 MHz Band. The 600 MHz Band OOBE and power limits coupled with three megahertz guard bands will provide as much or more protection to channel 37 operations than they currently receive from television operations. Therefore, these limits are sufficient to protect against harmful interference to existing channel 37 operations.

518. Some commenters argue that we should adopt more stringent emission limits to protect WMTS operations in channel 37. Specifically, they express concern that the reallocation of the 600 MHz Band for fixed and mobile services will result in a large number of mobile devices and/or base stations operating in close proximity of WMTS operations on adjacent channels, which will result in significant interference to WMTS operations. To address possible interference from mobile devices to WMTS operations, these commenters propose that we apply the spectral mask for TV white space devices to transmitters operating on channels adjacent to WMTS. In the alternative, WMTS Coalition suggests we restrict all mobile uplink transmissions to bands well removed from channel 37. In our Band Plan scenarios, the mobile uplink band will not be adjacent to WMTS operations; as a result, mobile devices should not cause harmful interference to WMTS operations.

519. To address possible harmful interference from base stations, commenters suggest we either prohibit base stations from operating within a specific range of WMTS systems, coordinate base station operations with adjacent WMTS systems and limit the maximum allowable field strength of base station emissions, or consider creating a guard band between channel 37 WMTS operations and wireless broadband operations. To protect Radio Astronomy facilities from wireless downlinks into Radio Astronomy observations, NAS–CORF proposes OOBE limits below $43+10*\log_{10}(P)$ dB.

520. We also note that Sony recommends that we clearly define transmission masks for all operations under the new 600 MHz Band, including both television and wireless data, and for both base stations and mobile devices. The Commission's transmission masks for existing spectrum bands and the associated measurement procedures are clearly defined in its ''Emission Limits'' rules.

521. As discussed above, we adopt a three megahertz guard band between 600 MHz base stations and channel 37 services. Further, we adopt a band plan that has generally large separations between 600 MHz mobile stations and channel 37 services, and require 600 MHz licensees to coordinate with NSF when radio astronomy observatories are near their operations. Given these considerations, the proposed OOBE limits for the 600 MHz Band will mitigate potential harmful interference to channel 37 operations. If a specific incidence of harmful interference occurs, we may impose stricter emissions limits as a remedy.

b. Power Limits

522. For 600 MHz Band downlink operations, the Commission proposed to limit fixed and base station power for downlink operations in non-rural areas to 1000 watts ERP for emission bandwidths less than 1 MHz and to 1000 watts per 1 MHz ERP for emission bandwidths greater than one megahertz, and to double these limits to 2000 watts or 2000 watts/MHz ERP in rural areas, provided advance notice is given. In addition, the Commission proposed not to apply the power flux density requirements of section 27.55(b) to the 600 MHz Band because there is no provision for high powered (50 kW) stations within the 600 MHz Band. In the 600 MHz Band uplink band, the Commission proposed to adopt the same power limit of three watts ERP for both portables and mobiles that apply to the

Lower 700 MHz Band and prohibit higher-powered control station operations, which are allowed in the Lower 700 MHz Band. Commenters overwhelmingly support our adopting the proposed power limits for the 600 MHz Band. We adopt these proposed limits, which will help ensure robust service in the 600 MHz Band while also helping to minimize harmful interference into other bands. These power limits are also commonly employed in other commercial wireless services bands and it has generally been found to be adequate in preventing harmful interference to adjacent spectrum blocks operations.

c. Base Station Antenna Height Restrictions

523. In the *NPRM,* the Commission proposed to apply the Lower 700 MHz Band flexible base station antenna height rules to 600 MHz Band base stations. *See* 47 CFR 27.50(c). Consistent with the Commission's proposal, specific antenna height restriction for 600 MHz Band base stations are not necessary. The general requirement to not endanger air navigation and the effective height limitations implicitly resulting from our co-channel interference rules obviate the need for specific antenna height restrictions for 600 MHz Band licensees. Further, commenters addressing this issue support this proposal. Thus, we will not require specific antenna height restrictions for 600 MHz Band base stations.

d. Co-Channel Interference Between 600 MHz Band Wireless Broadband Systems

524. We adopt the 700 MHz Band co-channel interference requirements, limiting field strength levels at the edge of a license area to 40 dBμV/m for the 600 MHz Band to protect adjacent wireless broadband systems from one another. *See* 47 CFR 27.55(a). The 700 MHz Band requirements are appropriate because of the 700 MHz Band's similar propagation and interference characteristics. Commenters support this approach. Thus we adopt the proposed co-channel interference levels and expand 47 CFR 27.55(a)(2) of the Commission's rules to include the 600 MHz Band.

e. Interoperability Rule

525. We adopt an interoperability requirement for the 600 MHz Band. Specifically, we require that user equipment certified to operate in any portion of the 600 MHz Band must be capable of operating throughout the 600 MHz Band. Although the 600 MHz Band Plan promotes interoperability by creating a single paired band rather than multiple bands, it does not guarantee that interoperability will naturally occur, particularly since, as a technical matter, multiple filters may be needed depending on how much spectrum is repurposed.

526. Commenters overwhelmingly support the principle of interoperability. Many commenters agree that the Commission should mandate an interoperability requirement while others suggest that the Commission could encourage interoperability through a carefully organized band plan. US Cellular proposes that the Commission should ''require that: (1) All mobile devices designed to operate on 600 MHz paired spectrum must tune to all 600 MHz paired frequencies; and (2) all 600 MHz networks operating on 600 MHz paired frequencies must permit the use of such devices.'' US Cellular also suggests that, in the event that we offer nationwide downlink-only blocks, any interoperability requirement should apply to downlink-only spectrum as well. Verizon Wireless, however, states that ''the Commission should not adopt any interoperability requirement but should instead facilitate interoperability by adopting a well-conceived band plan that minimizes interference issues.'' It also raises concerns that mandating interoperability will have a negative impact on investment and reduce the value of auctioned spectrum by increasing device complexity, size and cost.

527. Historically, the Commission has supported promoting interoperability. Beginning with the licensing of cellular spectrum, the Commission has opined that consumer equipment should be capable of operating over the entire range of cellular spectrum as a means to ''ensure full coverage in all markets and compatibility on a nationwide basis.'' More recently, a group of small and rural wireless licensees in the Lower 700 MHz Band asserted that the larger wireless carriers had been involved in developing restrictive band classes for 700 MHz mobile equipment, which limited their ability to provide roaming to their customers, delayed the deployment of networks in rural areas, and limited smaller wireless carriers from fully utilizing their spectrum, and urged the Commission to initiate a rulemaking to address interoperability issues in the 700 MHz Band. Subsequently, the Commission took certain steps to implement an industry solution to provide interoperable service in the Lower 700 MHz Band in an efficient and effective manner to improve choice and quality for consumers of mobile services. In reviewing the voluntary solution that would resolve the lack of interoperability in this band, the Commission determined that the voluntary solution would serve the public interest by enabling consumers, especially in rural areas, to enjoy the benefits of greater competition and more choices, and by encouraging efficient use of spectrum, investment, job creation, and the development of innovative mobile broadband services and equipment.

528. To comply with the interoperability requirement we adopt for the 600 MHz Band, user equipment certified to operate in any portion of the 600 MHz Band must be capable of operating, using the same technology that the licensee has elected to use, throughout the entire 600 MHz Band. While we adopt a band plan that promotes interoperability by creating a single paired band, the unique nature of the incentive auction amplifies the need for certainty and clear rules. Given that we may repurpose more spectrum for flexible use than can be supported by a single filter, promoting interoperability through our band plan is insufficient to ensure interoperability for this band. Thus, we make clear that our interoperability requirement applies to the entire 600 MHz Band, regardless of how many band classes may be created by standards-setting bodies to cover this spectrum assigned for flexible-use licenses (i.e., devices must support the entire 600 MHz Band, regardless of whether services are provided over one 5+5 megahertz block, or multiple spectrum blocks). The benefits of requiring interoperability to promote rapid deployment of the 600 MHz Band, particularly in rural areas, outweigh any potential costs relating to increased device complexity.

529. The Commission's experience with deployment in the Lower 700 MHz Band highlights the need for clear *ex ante* interoperability rules to promote rapid deployment in the 600 MHz Band, particularly in rural areas. Although Verizon Wireless notes that the Commission chose to defer to voluntary industry initiatives in promoting interoperability in the PCS band, it did so only because ''the industry is now working aggressively to complete several voluntary interoperability standards for PCS in a timely manner.'' The record reflects no such assurances here. We further note that there may be increased complexity of 600 MHz devices independent of any interoperability requirement depending on the amount of spectrum we can repurpose for 600 MHz Band services.

As Verizon readily acknowledges, clearing a large swath of spectrum would inevitably increase device complexity but that repurposing a large amount of spectrum for new wireless use ''would be a good 'problem' to have.'' Because it is essential to promote rural broadband deployment and ensure that consumers have rapid access to 600 MHz Band services, the public interest will be best served by requiring interoperability in the 600 MHz Band, and therefore adopt an interoperability requirement.

530. The 600 MHz Band Plan we adopt today also ensures that we will clear broadcast television stations from channel 51, which will serve as the top edge of the 600 MHz uplink band. Commenters strongly support clearing channel 51 of broadcast television operations to minimize interference to 700 MHz A Block operations, and urge us to consider early relocation of channel 51. Under our 600 MHz Band Plan, pursuant to each of the band plan scenarios we set forth, we will offer the first spectrum block at channel 51. Further, we note that our decisions today on repacking and reimbursement support early, voluntary relocation of channel 51.

f. Other Technical Issues

531. In addition to the specific technical issues addressed above, the Commission proposed to apply several part 27 rules to the 600 MHz Band: Equipment authorization, RF safety, frequency stability, antennas structures; air navigation safety, and disturbance of AM broadcast station antenna patterns. *See* 47 CFR 27.51, 27.52, 27.54, 27.56, 27.63. The Commission reasoned that because the 600 MHz Band will be licensed as a part 27 service, these rules should apply to all licensees, including those who acquire licenses through partitioning or disaggregation. No commenters oppose this proposal. Accordingly, because we are licensing the 600 MHz Band under our part 27 regulatory framework and these rules generally apply to all part 27 services, we will apply these additional part 27 rules to 600 MHz Band licensees.[3]

2. Service Rules

a. Flexible Use, Regulatory Framework, and Regulatory Status

(i) Flexible Use

532. We adopt the Commission's proposal to license the 600 MHz Band under flexible-use service rules, in accordance with the Spectrum Act's direction that new initial licenses for spectrum voluntarily relinquished through incentive auction be subject to flexible-use service rules. Accordingly, 600 MHz Band licensees may use the licensed, 600 MHz Band spectrum for any use permitted by the Table of Allocations, provided that the licensee complies with the applicable service rules. Adopting flexible-use service rules, moreover, is consistent with prior Congressional and Commission actions that promote allocating spectrum for flexible use.

(ii) Regulatory Framework

533. In accordance with Congress's direction that new initial licenses made available through incentive auctions be subject to flexible use service rules, we will license the 600 MHz Band under part 27. We received no comments on this proposal. The part 27 rules provide a broad and flexible regulatory framework for licensing spectrum, enabling the spectrum to be used for a wide variety of broadband services, thereby promoting innovation and efficient use.

(iii) Regulatory Status

534. We adopt the proposal to apply 47 CFR 27.10 of our rules to the 600 MHz Band. Under this flexible regulatory approach, 600 MHz Band licensees may provide common carrier, non-common carrier, private internal communications or any combination of these services, so long as the provision of service otherwise complies with applicable service rules. This broad licensing framework is likely to achieve efficiencies in the licensing and administrative process and will provide flexibility to the marketplace, thus encouraging licensees to develop new and innovative services. Moreover, by applying this requirement to 600 MHz Band licensees, they will receive the same regulatory treatment as other part 27 licensees subject to this rule. Although no commenters directly address this issue, commenters do support increased regulatory flexibility generally. This approach is in the public interest and its benefits outweigh any potential costs.

535. We remind potential applicants that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise the applicant must choose non-common carrier status. If a potential licensee is unsure of the nature of its services and whether classification as common carrier is appropriate, it may submit a petition with its application, or at any time, requesting clarification and including service descriptions for that purpose.

536. Consistent with the Commission's proposal in the *NPRM,* we adopt for the 600 MHz Band the part 27 requirement that if a licensee elects to change the service or services it offers such that its regulatory status would change, it must notify the Commission and must do so within 30 days of making the change. A change in the licensee's regulatory status will not require prior Commission authorization, provided the licensee is in compliance with the foreign ownership requirements of section 310(b) of the Communications Act that apply as a result of the change. We note, however, that a different time period (other than 30 days) may apply, as determined by the Commission, where the change results in the discontinuance, reduction, or impairment of the existing service.

b. License Restrictions

(i) Eligibility

537. We adopt the proposed open eligibility standard. Commenters that support our adoption of open eligibility for the 600 MHz Band do so largely on the basis that large, diverse participation will foster innovation, competition, spectrum reclamation and maximization of spectrum use. Open eligibility for the 600 MHz Band is consistent with our statutory mandate to promote the development and rapid deployment of new technologies, products, and services; economic opportunity and competition; and the efficient and intensive use of the electromagnetic spectrum. Therefore, the potential benefits of open eligibility for the 600 MHz Band outweigh any potential costs.

538. Open eligibility is a threshold matter in determining access to spectrum. Our adoption of open eligibility in no way restricts or preempts other statutory requirements that may limit access to spectrum, such as foreign ownership and character qualifications. In that regard, we take this opportunity to clarify that adopting open eligibility for the 600 MHz Band is not inconsistent with the spectrum aggregation rules we establish in the *MSH Report and Order* (*See* Policies Regarding Mobile Spectrum Holdings, FCC 14–63, WT Docket No. 12–269 (rel. June 2, 2014)).

539. The Commission's precedent regarding open eligibility for bidding at auction for mobile wireless licenses generally has focused on whether it was necessary to restrict the eligibility of a firmly established regulatory class of entities. In contrast, our focus in adopting a mobile spectrum holdings

[3] The Commission recently deleted 47 CFR 27.63. Rules governing disturbance of AM broadcast station antenna patterns are now contained in Subpart BB of Part 1.

limit in the *MSH Report and Order* is on a class of entities that, through their substantial existing holdings of below-1–GHz spectrum and potential acquisition of a significant portion of the 600 MHz Band in a particular geographic area, could hamper competition in the mobile wireless service market. This is a transient, open class of entities—any entity could enter or exit this class based solely on the amount of its below-1–GHz spectrum holdings in a particular geographic area or the geographic scope of its coverage. The Commission previously has recognized this type of distinction, between open eligibility and the CMRS spectrum cap (until its elimination in 2001) or other CMRS spectrum aggregation limits. Here, although it is not necessary to restrict auction eligibility of a closed class of entities, we do find it necessary to apply a limit on the amount of 600 MHz spectrum that can be acquired at the forward auction by any entity with substantial existing holdings of below-1–GHz spectrum in a particular geographic area, depending upon the geographic scope of its coverage. Though we acknowledge that on occasion the Commission's description of the scope of its open eligibility standard might not have been precise, we take the opportunity to clarify that mobile spectrum holding limitations are not eligibility restrictions to which the open eligibility standard applies.

540. In addition, even if the mobile spectrum holdings limit we adopt in the *MSH Report and Order* were to be considered a restriction on open eligibility, this limit meets the standard that open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and an eligibility restriction would be effective in eliminating that harm.

541. In sum, we see no record evidence that would persuade us that our approach is inconsistent with our past framework for assessing eligibility matters and, in any event, we clarify our open eligibility approach going forward.

(ii) Foreign Ownership

542. In order to fulfill our statutory obligations under section 310 of the Communications Act, all 600 MHz Band applicants and licensees shall be subject to the provisions of 47 CFR 27.12 of the Commission's rules. All such entities are subject to section 310(a), which prohibits licenses from being ''granted to or held by any foreign government or the representative thereof.'' In addition, any applicant or licensee that would provide a common carrier, aeronautical en route, or aeronautical fixed service would also be subject to the foreign ownership and citizenship requirements of section 310(b).

543. No parties comment on the Commission's proposal to require all 600 MHz Band applicants and licensees to provide the same foreign ownership information in their filings, regardless of the type of service the licensee would provide using its authorization. Applicants for this Band should not be subject to different obligations in reporting their foreign ownership based on the type of service authorization requested in the application and the benefits of a uniform approach outweigh any potential costs. Therefore, we will require all 600 MHz Band applicants and licensees to provide the same foreign ownership information, which covers both sections 310(a) and 310(b), regardless of which wireless communications service they propose to provide in the Band. We expect, however, that we would be unlikely to deny a license to an applicant requesting to provide services exclusively that are not subject to section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for authority to provide section 310(b) services. However, if any such licensee later desires to provide any services that are subject to the restrictions in section 310(b), we would require that licensee to apply to the Commission for an amended license, and we would consider issues related to foreign ownership at that time.

c. License Term, Performance Requirements, Renewal Criteria, and Permanent Discontinuance of Operations

(i) License Term

544. In recognition of the Post-Auction Transition Period that will occur after the completion of the incentive auction, we adopt an initial license term of 12 years for 600 MHz Band licenses, and a term of 10 years for any subsequent license renewals. In addition, in the event that a license is partitioned or disaggregated, any partitionee or disaggregatee will be authorized to hold its license for the remainder of the partitioner or disaggregator's license term, consistent with the existing part 27 rule. Accordingly, we modify 47 CFR 27.13 and 27.15 of the Commission's rules to reflect these determinations.

545. The Communications Act does not require a specific term for non-broadcast spectrum licenses. The Commission has typically adopted 10-year license terms for part 27 services, but has also found, as in the case of AWS–1 licenses and AWS–3 licenses, a longer initial term to be in the public interest. Further, commenters generally support at least a 10-year license term. Given the complexities and timing of clearing broadcast operations in this Band, we agree with US Cellular that a longer initial license term is appropriate. Consequently, adopting a 12-year initial license term is in the public interest and the associated benefits outweigh any potential costs.

546. A 12-year license initial term will provide wireless licensees with sufficient time to plan and launch operations. As explained above, following the incentive auction, broadcast television licensees will have, at most, 39 months to transition off channels that are repurposed for flexible use licenses sold at the forward auction. While we expect that during that period, 600 MHz Band wireless licensees can plan and begin building operations, they will not have unfettered access to the repurposed spectrum won at the forward auction until broadcast television licensees have ceased operating on those channels. Extending the Commission's typical license term by two years, to provide an initial license term of 12 years for the 600 MHz Band licenses, is the best way to accommodate the necessary broadcast transition while retaining the proper incentives for 600 MHz Band licensees to rapidly deploy wireless services in the Band.

547. We decline to adopt alternative proposals by US Cellular. With respect to its proposal for 15-year initial license terms, we observe that the Post-Auction Transition Period begins prior to wireless providers' receiving their licenses. Therefore, a 12-year initial term adequately compensates for this transition, but a 15-year initial term would be unnecessarily long. With respect to US Cellular's proposal that we adopt a 10-year license term, but do not commence the initial license term until broadcast television licensees have ceased operating on the repurposed spectrum, such a plan would create uncertainty, would be difficult to administer, and would be difficult for licensees and other interested parties to monitor and implement. In addition, because these broadcast television licensees are transitioning off the repurposed spectrum on a rolling basis, we see no need to delay 600 MHz Band licensees' access until all broadcast operations in the 600 MHz Band cease. Moreover, we must issue 600 MHz Band licenses promptly in order to fund the TV Broadcaster Relocation Fund that will be used to compensate relocating

broadcast operations. Delaying the start of the initial wireless license term until broadcast operations have been cleared could delay wireless deployment and undermine the regulatory incentives that our policies are intended to foster.

(ii) Performance Requirements

548. We establish performance requirements to promote the productive use of spectrum, to encourage licensees to provide service to customers in a timely manner, and to promote the provision of innovative services in unserved areas, particularly rural areas. Over the years, the Commission has tailored performance and construction requirements with an eye to the unique characteristics of individual frequency bands and the types of services expected, among other factors. The performance requirements we adopt for the 600 MHz Band are consistent with those the Commission has adopted for similar spectrum bands, while taking into account certain exceptional circumstances related to the conduct of the incentive auction, including the timing for the transition of this spectrum from broadcast use to flexible wireless use. These requirements will ensure that the 600 MHz Band spectrum is put to use expeditiously while providing 600 MHz Band licensees with flexibility to deploy services according to their business plans. Specifically, we adopt the following:

- *600 MHz Band interim build-out requirement:* Within six (6) years of initial license grant, a licensee shall provide reliable signal coverage and offer wireless service to at least forty (40) percent of the population in each of its license areas.
- *600 MHz Band final build-out requirement:* Within twelve (12) years of initial license grant (or at the end of the license term), a licensee shall provide reliable signal coverage and offer wireless service to at least seventy-five (75) percent of the population in each of its license areas.

549. We also adopt the following penalties for failing to meet the build-out benchmarks:

- *Failure to meet 600 MHz Band interim build-out requirement:* Where a licensee fails to meet the interim build-out requirement in any license area, the final build-out requirement and initial license term for that license shall be accelerated by two years (from 12 to 10).
- *Failure to meet 600 MHz Band final build-out requirement:* Where a licensee fails to meet the final build-out requirement for any license area, its authorization for that license area shall terminate automatically without further Commission action, and the licensee will be unable to regain the license.

550. We explain below the rationale for and public benefits of imposing these performance requirements. Those benefits outweigh any perceived costs of adopting performance benchmarks and penalties for failure to meet those requirements. We also discuss below how we will measure build-out in the Gulf of Mexico.

551. *Population-Based Benchmark, per PEA License Area.* Supported by a number of comments in the record, we adopt the proposal to use objective, population-based interim and final construction benchmarks, which will be measured per license area. Requiring 600 MHz Band licensees to meet these performance benchmarks will promote rapid deployment of new broadband services to the American public, and at the same time provide licensees with certainty regarding their construction obligations. We agree with CCA and MetroPCS that, for the 600 MHz Band, measuring build-out by percentage of population served ''provides a clear metric that will promote efficient deployment.''

552. We are not persuaded by arguments that our build-out requirements must be geography-based, or include a geographic component, in order to ensure that less densely populated, often rural, communities have timely access to the most advanced mobile broadband services. We agree that it is important to promote rapid broadband deployment in rural areas. In fact, section 309(j)(4)(B) of the Communications Act requires that the Commission ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas.'' Adopting relatively small, PEA service areas, and requiring licensees to meet challenging population-based benchmarks in each individual license area separately, strikes an appropriate balance between providing flexibility to 600 MHz Band licensees to deploy their networks in a cost-effective manner and assertively promoting deployment of service to less densely populated areas. Therefore, we reject commenters' proposals to measure build-out geographically or through a combination of population and geography. Our decision to require population-based benchmarks in this Band does not foreclose our ability to impose geographic-based benchmarks in other spectrum bands that may warrant different considerations.

553. Further, we reject Verizon's request that we measure compliance with the interim benchmark in the aggregate, i.e., by summing the population of all of a licensee's authorizations in the 600 MHz Band. Creating benchmarks on a per-license basis, rather than in the aggregate, is consistent with our build-out requirements in other, similar spectrum bands. In addition, measuring benchmarks on a per-license basis is consistent with our determination to license service on a geographic basis and holds a licensee accountable for meeting performance obligations for all of the licenses (including partitioned licenses) that it holds. Thus, a per-license approach allows for more flexibility and certainty. For example, should a licensee partition some of a 600 MHz Band license area, a percentage-based approach would apply to each partitioned license. In contrast, it is not clear how the responsibility for meeting benchmarks for partitioned and disaggregated licenses would be handled under Verizon's proposal.

554. *Interim Benchmark.* Requiring an interim milestone is supported by the record and serves the public interest. A 40 percent build-out per license area benchmark is consistent with the interim benchmarks established in other bands and similar to various proposals suggested by commenters. Verizon proposes adopting a build-out requirement of 40 percent of the population within four years. US Cellular suggests we require licensees to meet the interim build-out benchmark by covering 35 percent of the population within five years. Setting the interim benchmark of 40 percent at six years addresses commenters' concerns over taking into account the broadcast transition.

555. Several commenters ask that we base our build-out benchmarks on the date that the broadcast repacking is completed and the 600 MHz Band is cleared. We decline to do so. Instead, the interim build-out benchmark is six years from the grant of the license, which should adequately account for the Post-Auction Transition Period. Given that no broadcast television licensee will be permitted to operate on its pre-auction channel after the 39-month Post-Auction Transition Period regardless of whether they have completed construction and have begun operating on their new channel, 600 MHz Band licensees should have sufficient time to deploy their networks to meet the interim benchmark. In addition, wireless licensees can make use of the spectrum (for testing, etc.) in coordination with broadcast television licensees during the 39-month transition period. Further, setting a date certain that is tied to initial grant of the 600

MHz Band license will provide greater certainty to 600 MHz Band licensees, their investors, and other interested parties. This does not mean, however, that a 600 MHz Band licensee must wait for the entire broadcast transition to be completed; a 600 MHz Band licensee can begin operating in a specific license area as soon as the broadcast television licensees have ceased operations in that license area.

556. We disagree with the few commenters that argue that interim construction benchmarks are unnecessary because licensees already have commercial incentives to rapidly deploy their networks. While such commercial incentives may exist in many market areas, the per-license approach will help to ensure that build-out progresses appropriately in all license areas. Some commenters also assert that benchmarks unfairly favor large carriers and incumbents because they are able to spread the economic construction cost over a greater number of subscribers than smaller carriers and new entrants. We disagree. The Commission noted in the *NPRM* that the propagation characteristics of the 600 MHz Band should allow for robust coverage at a lower cost than some other comparable bands. The interim benchmark we adopt in this Order will provide all licensees with an ability to scale networks in a cost efficient manner while also ensuring that the vast majority of the population will have access to wireless broadband services expeditiously.

557. Further, we reject the proposal of commenters who advocate a ''substantial service'' standard at the end of the license term as the only measurement of performance. Our purpose is to ensure that timely and robust build-out occurs in this Band, and for the reasons enumerated above, concrete interim and final build-out benchmarks will best facilitate meeting this goal. Further, we note that in recent decisions, the Commission has replaced the substantial service standard with specific interim and final build-out requirements.

558. *Penalty for Failure to Meet the Interim Benchmark.* As the Commission has done in similar spectrum bands, where a wireless licensee fails to meet its interim build-out requirement, we accelerate both the time frame to meet the final build-out benchmark and the length of the license term by two years. Several commenters agree that if a licensee fails to meet the interim build-out requirement, we should accelerate the time frame for a licensee's meeting the final build-out requirement, with some of those same commenters advocating for acceleration of the license term as well. Because the initial license term is 12 years, if a licensee fails to meet the interim benchmark, it must complete its final build-out requirement within 10 years, when its license term also expires.

559. *Final Benchmark.* Within 12 years of the initial license grant (or 10 years if the interim benchmark is not met), a licensee shall provide reliable coverage and offer wireless service to at least 75 percent of the population in each of its license areas. Establishing a final build-out benchmark that coincides with the end of the initial license term is consistent with how the Commission has formulated performance requirements in other spectrum bands. Because we have set the interim benchmark at six years and we have created a 12-year initial license term, Verizon's suggestion that we establish a seven-year final build-out requirement is unduly accelerated and we therefore decline to adopt it. In addition, the Post-Auction Transition Period renders infeasible Cavell, Mertz's suggestion that a 600 MHz Band wireless licensee be required to construct its new facilities within a year-and-a-half. Under the circumstances, a 12-year construction milestone provides a reasonable timeframe for a licensee to deploy its network and offer widespread service, provided it meets its interim benchmark. Licensees that do not meet the six-year interim benchmark must accelerate their final build out by two years to meet the final benchmark by the end of their shortened, 10-year license term.

560. *Penalty for Failure to Meet the Final Benchmark.* Where a licensee fails to meet the final build-out requirement in any PEA, its authorization for each PEA in which it fails to meet the requirement shall terminate automatically without further Commission action, and the licensee will be prohibited from regaining the license. Automatic license termination with the inability to regain the license is a common remedy for failure to build out part 27 licenses. Terminating only the specific licenses where a licensee fails to meet the final benchmark will not directly affect a licensee's customers in other license areas. Further, as WGAW points out, cancellation of the license will free up spectrum to an entity that will more likely develop it. We decline to adopt a ''keep-what-you-use'' approach or ''use it or lease it'' or ''use it or share it'' as penalties for failure to meet construction requirements as some commenters suggest, because these proposals may encourage less robust build-out by a licensee that decides not to build out to the final benchmark—particularly in rural areas.

561. As a general matter, we expect that 600 MHz Band licensees will meet the performance requirements because of the serious consequences associated with non-compliance, including automatic license cancellation. Further, we expect that licensees' deployment will generally exceed the levels set forth in the benchmarks, and that these build-out requirements generally represent a floor—not a ceiling. As for US Cellular's assertion that automatic termination is too punitive, the Commission has previously explained and we state again that automatic termination is not overly punitive or unfair if robust build-out is to be accomplished. It is noteworthy that the Commission has applied this approach to nearly all geographically-licensed wireless services. Further, the Commission has rejected the argument, and we do so again here, that an automatic termination penalty would deter capital investment, observing that the wireless industry has invested billions of dollars and has flourished under this paradigm in other spectrum bands. For the same reason, an automatic termination penalty will have little effect on auction participation, as suggested by US Cellular. Finally, we do not agree with US Cellular that automatic termination harms the public because, even if a customer loses service from a provider when it loses spectrum rights for a particular license area, alternative providers may be available. We also expect that a future licensee may ultimately be able to serve more customers for that license area.

562. *Compliance Procedures.* Having received no comments on the issue, we adopt the proposal in the *NPRM* to apply to the 600 MHz Band the compliance procedures under 47 CFR 1.946(d) of the Commission's rules. Specifically, this rule states that licensees must demonstrate compliance with their performance requirements by filing a construction notification within 15 days of the relevant milestone certifying that they have met the applicable performance benchmark. Additionally, consistent with other part 27 services, we require that each construction notification include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

563. We emphasize that electronic coverage maps must accurately depict

the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire PEA, its map must accurately depict the boundaries of the area or areas within each PEA not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each PEA within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

564. The licensee must use the most recently available decennial U.S. Census data at the time of measurement to meet the population-based build-out requirements. Specifically, a licensee must base its claims of population served on areas no larger than the Census Tract level. To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may only include the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. This requirement tracks the Commission's action requiring broadband service providers to report ''snapshots'' of broadband service at the Census Tract level twice each year by completing FCC Form 477.

565. *Performance Requirements of Impaired Licenses.* As discussed above, we plan to offer ''impaired'' licenses in the forward auction, i.e., licenses that contain impairments, or areas within the license area where a wireless licensee may not be able to provide service because it would interfere with a broadcast television licensee's coverage area, or conversely, those license areas in which a wireless provider may receive harmful interference from remaining television operations in or near the 600 MHz Band. It is important to apply the same performance requirements to all 600 MHz Band wireless licensees to ensure rapid build-out, but we recognize that licensees holding impaired licenses may not be able to build out their entire license area due to the impairments within a particular geographic service area. Thus, for those licensees, 47 CFR 27.14 will similarly apply, but a licensee with a geographic service area that includes any impairments may meet the build-out benchmarks by providing reliable signal coverage and offering service to the relevant percentages of population in the service area that is not impaired. To the extent this applies to a licensee's particular impaired license, at the relevant construction benchmarks, a licensee must provide with its construction notification an explanation of why it cannot serve its entire license area and/or meet its performance requirements within the entire license area. The submission must be truthful and accurate and must not omit material information that is necessary for the Commission to determine whether the licensee could have reasonably met its performance requirements for its entire license area.

566. *Gulf of Mexico.* Having received no comments on Gulf of Mexico performance requirements, and recognizing that we are licensing wireless service in the Gulf as a specified PEA, we adopt the same coverage requirements as set forth above, with one exception: we will calculate ''population'' pursuant to the approach taken in *Small Ventures USA, LP and Cellco Partnership d/b/a Verizon Wireless Request for Waiver and Applications for Assignment of 700 MHz C Block License,* WT Docket No. 12–373, Memorandum Opinion and Order, 28 FCC Rcd 6569 (2013). In that order, the Wireless Bureau recognized that using the conventional Census Tract methodology for determining population in the Gulf of Mexico would be infeasible because the Gulf consists of a body of water with non-permanent, mobile residents. Consistent with that order, we allow a Gulf of Mexico licensee to use all off-shore platforms, including production, manifold, compression, pumping and valving platforms as a proxy for population in the Gulf of Mexico for purposes of meeting build-out obligations. Thus, in lieu of measuring its build-out obligations based on population, a licensee serving the Gulf of Mexico shall within six years provide reliable signal coverage and offer wireless service to at least 40 percent of all off-shore platforms in its license area and within 12 years (or at the end of the license term), provide reliable signal coverage and offer wireless service to at least 75 percent of all off-shore platforms in its license area in the Gulf of Mexico. All penalties and other compliance procedures we adopt, excluding those discussing the methodology for meeting population-based build-out requirements, shall apply to a 600 MHz Band licensee with respect to its Gulf of Mexico license.

(iii) Renewal Criteria

567. Pursuant to section 308(b) of the Communications Act, we will require 600 MHz Band licensees seeking license renewal to file renewal applications; below, we specify the information that renewal applicants must provide to enable the Commission to assess whether renewal is warranted and in the public interest. In addition, where a license is not renewed, the associated spectrum will be returned to the Commission and made available for assignment. Filing competing applications against license renewal applications is not permitted.

568. We apply to 600 MHz Band licensees the same renewal showing requirements we recently adopted for the AWS–3 Band. Specifically, a 600 MHz Band licensee's renewal showing must provide a detailed description of its provision of service during the entire license period and discuss: (1) the level and quality of service provided (including the population served, the area served, the number of subscribers, and the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying tribal land as defined in 47 CFR 1.2110(f)(3)(i) of the Commission's rules; and (5) any other factors associated with the level of service to the public. Accordingly, we hereby modify 47 CFR 27.14 of the Commission's rules to apply these renewal showing criteria to the 600 MHz Band.

569. The renewal requirements we establish for 600 MHz Band licensees are in the public interest and their benefits outweigh any likely costs. In recent years, the Commission has refined its license renewal policies—beginning with the *700 MHz First Report and Order,* and most recently in the *AWS–3 Report and Order.* (*See Service Rules for the 698–806 MHz Band and Revision of the Commission's Rules Regarding Enhanced 911 Emergency Calling Systems, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements,* 72 FR 27688 (2007) (*700 MHz First Report and Order); Commercial Operations in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz Bands,* 79 FR 32366 (2014) (*AWS–3 Report and Order*)). Through these actions, the Commission has refined its license renewal policies—beginning with the 700 MHz First Report and Order in 2007, and most recently in the AWS–3 Report and Order. Through these actions, the Commission established that licensees must demonstrate that they are providing adequate levels of service over the course of their license terms,

and here we act consistently with that policy. Consequently, we agree with those commenters who support adopting renewal criteria for the 600 MHz Band that are based on those criteria adopted in the *700 MHz First Report and Order* and that were similarly followed in the *AWS–4 Report and Order (Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands,* 78 FR 8230 (2013)) the *H Block Report and Order* (*Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands,* 78 FR 50214 (2013)) and the *AWS–3 Report and Order.* These renewal requirements will provide licensees certainty regarding the factors that the Commission will consider during the renewal process, thereby facilitating investment decisions regarding broadband rollout. Further, adopting clear requirements address US Cellular's concern that the renewal process not be unnecessarily burdensome to licensees or that the process not deter investment.

570. In adopting these criteria, we decline to adopt at this time US Cellular's proposal to categorically provide licensees a renewal expectancy if they meet their performance requirements. US Cellular claims that renewal expectancies, based solely on performance requirements, would provide certainty to licensees and investors. As the Commission has consistently stated, performance and renewal showings are distinct; they serve different purposes and, if not met, the Commission may apply different penalties. A performance showing provides a snapshot in time of the level of a licensee's service, whereas a renewal showing provides information regarding the level and types of service provided over the course of a license term. Where a licensee meets the applicable performance requirements, but fails to provide continuity of service (by, for example, repeatedly discontinuing operations between required performance showings for periods of less than 180 days), the Commission could find that renewal would be contrary to the public interest. Where a licensee fails to meet its interim build-out requirement and becomes subject to a two-year acceleration of both its final build-out requirement and its license term, its final performance showing might merely reflect a snapshot in time of compliance with the performance requirements. By contrast, its renewal application must provide a timeline of its provision of service, the percentage of the license-area population covered, and types of service provided over the course of the license term, including any efforts to meet the interim build-out requirement.

571. For subsequent license terms, licensees are likely—absent extraordinary circumstances—to obtain license renewal if they submit satisfactory showings demonstrating that they have maintained or exceeded the level of coverage and service required at the final build-out benchmark (during the initial license term) and otherwise comply with Commission rules and policies and the Communications Act.

572. Finally, we reject US Cellular's proposal that we permit competing renewal applications. Rather, we agree with Verizon that the Commission need not permit competing renewal applications or comparative hearings to evaluate an application for license renewal. The renewal requirements we adopt in this Order will provide Commission staff with ample information to determine whether license renewal would serve the public interest. The public interest would be ill-served by permitting the filing of potentially time-consuming and costly competing applications.

(iv) Permanent Discontinuance of Operations

573. Section 1.955(a)(3) of the Commission's rules will apply to 600 MHz Band licensees because the benefits of applying this rule outweigh any potential costs of doing so. Notably, we received no comments on the permanent discontinuance proposals. Therefore, a licensee's 600 MHz Band authorization will automatically terminate, without specific Commission action, if service is ''permanently discontinued.''

574. In accordance with the proposal in the *NPRM,* for providers that identify their regulatory status as common carrier or non-common carrier, we define ''permanently discontinued'' as a period of 180 consecutive days during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider in the individual license area (or smaller service area in the case of a partitioned license). We adopt a different approach for wireless licensees that use their licenses for private, internal communications, however, because such licensees generally do not provide service to unaffiliated subscribers. For such private, internal communications, we define ''permanent discontinuance'' as a period of 180 consecutive days during which the licensee does not operate. Finally, as the Commission has previously explained, the operation of so-called channel keepers, e.g., devices that transmit test signals, tones, and/or color bars, do not constitute ''operation'' under 47 CFR 1.955(a)(3) or the Commission's other permanent discontinuance rules.

575. A licensee will not be subject to the discontinuance rules until the date it must meet its interim build-out requirement, thereby negating the possibility that a licensee will lose its license if it chooses to construct early, but may discontinue operations before the interim build-out benchmark date. The permanent discontinuance rules will apply thereafter, to include any subsequent license renewal term.

576. This approach is consistent with the discontinuance rules applied to similar wireless services. Using this approach for the 600 MHz Band also strikes the appropriate balance between affording licensees operational flexibility and ensuring that licensed spectrum is efficiently utilized.

577. Furthermore, in accordance with 47 CFR 1.955(a)(3) of the Commission's rules, if a licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 and requesting license cancellation. As explained above, even if the licensee fails to notify the Commission, an authorization will automatically terminate without specific Commission action if service is permanently discontinued.

d. Secondary Markets

(i) Qualifications Under Section 6004

578. The Commission previously adopted rule 47 CFR 27.12(b), which restricts entities from holding licenses if they have been barred by a federal agency for reasons of national security, in accordance with section 6004 of the Spectrum Act. Because that rule implements a statutory provision that applies to all spectrum bands covered under the Spectrum Act, 47 CFR 27.12(b) also applies to the 600 MHz Band. Further, we received no comments opposing or supporting applying Section 6004 to secondary market transactions that include 600 MHz Band licenses. Thus, consistent with the purpose of the statute, we require applicants to certify in an application seeking approval of a secondary market transaction involving 600 MHz Band licenses that neither the applicants nor any party to the

application are persons barred from participating in an auction under Section 6004 of the Spectrum Act.

(ii) Partitioning and Disaggregation

579. We adopt the part 27 partitioning and disaggregation rules for the 600 MHz Band. Very few commenters discuss partitioning and disaggregation, but those who do support this approach. Permitting partitioning and disaggregation is in the public interest, and based on our examination of the record, the associated benefits would outweigh any potential costs. We agree with Verizon that applying these rules ''promotes a robust secondary market in spectrum'' and ''facilitates acquisition of spectrum rights by smaller carriers who may serve small, targeted markets,'' thus allowing for new entrants and promoting competition. Further, permitting disaggregation and partitioning will help facilitate investment and rapid deployment in the 600 MHz Band, while giving licensees flexibility to use the spectrum to meet changing market demand. As the Commission noted when it first adopted partitioning and disaggregation rules, allowing this type of flexibility can facilitate the efficient use of spectrum, and expedite provision of services in areas that might not otherwise receive service in the near term.

580. As proposed in the *NPRM,* and consistent with the treatment of other part 27 services, a partitionee or disaggregatee will hold its license for the remainder of the partitioner's or disaggregator's license term. In addition, any 600 MHz Band licensee that is a party to a partitioning or disaggregation arrangement (or combination of both) must independently meet the applicable 600 MHz Band technical rules and regulatory requirements, including performance and renewal requirements. As the Commission has previously observed, this approach should facilitate efficient spectrum usage and prevent licensees from avoiding construction obligations by participating in secondary market transactions, while still providing operators with the flexibility to design their networks according to their operation and business needs.

(iii) Spectrum Leasing

581. We adopt the same spectrum leasing policies and rules that apply to other part 27 services. Commenters that discuss spectrum leasing support the proposals made in the *NPRM* and agree that adopting spectrum leasing rules will promote the public interest. For example, CTIA notes that ''the Commission's leasing policies have brought licensees much-needed flexibility in managing their networks, and have enabled innovative service and market entry by new competitors.'' Our secondary markets policies are designed to promote more efficient, innovative, and dynamic use of the spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among providers. Likewise, allowing spectrum leasing in the 600 MHz Band will serve these same purposes. In other part 27 services spectrum leasing policies generally follow the same approach as the partitioning and disaggregation policies for the band.'' Thus, our decision to permit spectrum leasing in the 600 MHz Band is consistent with our determination to permit partitioning and disaggregation in the 600 MHz Band and with our existing part 27 spectrum leasing policies.

e. Other Operating Requirements

582. Although we primarily adopt rules for the 600 MHz Band under part 27 of the Commission's rules, we also require 600 MHz Band licensees to comply with certain other rule parts that pertain generally to wireless communication services. This approach will maintain general consistency among various wireless communications services. We received no comments on the *NPRM* proposal. Section 27.3 of the Commission's rules lists some of the rule parts applicable to wireless communications services licensees. In addition, other FCC rules may apply to 600 MHz Band licensees, including those that apply only to certain licensees, depending on the specific type of service or services that a particular licensee provides. Thus, it is appropriate to apply 47 CFR 27.3, as well as similar rules applicable to wireless communications service licensees, to 600 MHz Band licensees. In so doing, we will maintain consistency among various wireless communications services—including the 600 MHz Band—which will best serve the public interest. For these same reasons, the benefits of this approach outweigh any potential costs.

VI. Procedural Matters

A. Final Regulatory Flexibility Analysis

583. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rule Making* (''*Notice*'' or ''*NPRM*''). The Commission sought written public comment on the proposals in the *Notice,* including comment on the IRFA. Because we amend the rules in this Order, we have included this Final Regulatory Flexibility Analysis (''FRFA'') which conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

584. In 2012, Congress mandated that the Commission conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (''Spectrum Act''). Congress's passage of the Spectrum Act set the stage for this proceeding and further expanded the Commission's ability to facilitate technological and economic growth. The Spectrum Act authorizes the Commission to conduct incentive auctions in which licensees may voluntarily relinquish their spectrum usage rights in order to permit the assignment by auction of new initial licenses subject to flexible use service rules, in exchange for a portion of the resulting auction proceeds. Section 6403 of the Spectrum Act requires the Commission to conduct an incentive auction of the broadcast television spectrum and includes specific requirements and safeguards for the required auction.

585. The incentive auction will have three major pieces: (1) A ''reverse auction'' in which full power and Class A broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra-high frequency (''UHF'') band for other uses; and (3) a ''forward auction'' of licenses for flexible use of the newly available spectrum.

586. In order to implement this congressional mandate to conduct an incentive auction of broadcast television spectrum, the Order adopts an auction design framework and rules for competitive bidding to govern the reverse auction, and modifies the Commission's general competitive bidding rules in Part 1 in order to conduct the related forward auction for new spectrum licenses. The other major component of the incentive auction, the repacking process, will help to determine which reverse auction bids will be accepted. In addition, consistent with the Commission's typical approach to spectrum license auctions, the adopted rules and Part 1 rule revisions provide a general framework to guide the development of the detailed procedures and deadlines needed to conduct the auction. A public notice

process will allow both the Commission and interested parties to focus on and provide input regarding discrete details of the auction design and the auction procedures.

587. In the 600 MHz Band Plan that the Commission adopts, existing channel 37 operations remain allocated for use by radio astronomy and medical telemetry equipment. Depending on the amount of spectrum recovered from the repacking process, the 600 MHz downlink band could be situated on one or both sides of channel 37. For any band plan configurations where wireless downlink blocks are adjacent to channel 37 services, the Commission adopts technically reasonable guard bands between the blocks and channel 37. This band plan will allow for maximum flexibility in clearing spectrum while sufficiently protecting incumbent services and new wireless operations.

588. To encourage entry by providers, including small providers, that contemplate offering wireless broadband service on a localized basis, yet at the same time not precluding carriers that plan to provide service on a much larger geographic scale, the Commission will license the 600 MHz Band on the basis of Partial Economic Areas (''PEAs''), a subdivision of Economic Areas (''EAs'') created by grouping areas using Metropolitan Statistical Area (''MSA'') boundaries, updated with 2010 U.S. Census data for each county. The Commission concludes that licensing on a PEA basis will best promote entry into the market by the broadest range of potential wireless service providers without unduly complicating the auction, thereby promoting competition. Moreover, the Commission concludes that licensing using PEAs throughout the country strikes the appropriate balance and will allow both smaller and larger wireless carriers to obtain licenses that best align with their respective business plans. In addition, because the MSA boundaries may more closely fit many wireless providers' existing footprints—in particular, smaller, non-nationwide providers—adopting this geographic licensing approach should provide a greater opportunity for all wireless providers to acquire spectrum licenses in their service areas.

589. To enable repacking of the broadcast spectrum, it is critical that the Commission determine how to preserve the coverage area and population served of full power and Class A stations as required by the Spectrum Act. Accordingly, the Commission adopts rules on engineering and other technical aspects of the repacking process, in particular Congress's mandate in section 6403(b)(2) of the Spectrum Act that it make all reasonable efforts to preserve the coverage area and population served of full power and Class A television stations in the repacking.

590. The broadcast television spectrum incentive auction and the associated repacking process could impact both the coverage area and the population served of full power and Class A television stations. If a station is assigned to a different channel, its technical facilities must be modified to preserve its coverage area because radio signals propagate differently on different frequencies. These varying propagation characteristics also mean that a new channel assignment may change the areas within a station's noise-limited service area affected by terrain loss. Channel reassignments, and stations going off the air as a result of the reverse auction, also may change the interference relationships between stations, which in turn affect population served. Stations going off the air can eliminate existing interference to the stations that remain on the air. Likewise, new channel assignments generally will eliminate interference that the reassigned stations are now causing or receiving. At the same time, new channel assignments create a potential for new interference between nearby stations on the same channel or an adjacent channel. The Commission adopts a repacking methodology that takes in account all of these impacts in order to carry out Congress's mandate in section 6403(b)(2) of the Spectrum Act.

591. The Commission recognizes that low power television (''LPTV'') and television translator (''TV translator'') stations may be impacted by repacking. These stations are not permitted to participate in the reverse auction. Moreover, these stations have only secondary interference protection rights and will not be protected during repacking. Many of these stations may be displaced from their current operating channel. To ease the burden on these stations, the Commission will allow displaced LPTV and TV translator stations to have the opportunity to submit a displacement application and propose a new operating channel. The Commission also will allow LPTV and TV translator stations to explore engineering solutions or agree on a settlement to resolve mutually exclusive displacement applications. In cases where stations do not resolve mutually exclusive displacement applications, the Commission will grant selection priority to the licensees of any displaced digital replacement translators (''DRTs''), and only after this priority will the Commission use an auction to resolve remaining displacement groups. The Commission also intends to initiate a rulemaking proceeding to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.

592. Following the conclusion of the incentive auction, the transition to the reorganized UHF band will be as rapid as possible without causing unnecessary disruption. Television stations that voluntarily turn in their licenses or agree to channel share must transition from their pre-auction channels within three months of receiving their reverse auction payments. The time required for stations reassigned to a new channel to modify their facilities will vary, so the Commission will tailor their construction deadlines to their situations. Consistent with Congress's mandate, the Commission establishes procedures to reimburse costs reasonably incurred by stations that are involuntarily reassigned to new channels, as well as by multichannel video programming distributors (''MVPDs'') to continue to carry stations reassigned to new channels. Other incumbents must also transition from the repurposed 600 MHz Band, including the guard bands. The Commission establishes procedures and deadlines for the transition of the following services: LPTV and TV translator stations; Broadcast Auxiliary Services (''BAS''); television white space devices; low power auxiliary stations (''LPAS'') and unlicensed wireless microphones; and wireless assist video devices.

593. In addition to repurposing UHF spectrum for new licensed uses, the Commission makes a significant amount of spectrum available for unlicensed use, a large portion of it on a nationwide basis. To prevent harmful interference between licensed services, the 600 MHz Band Plan includes a number of guard bands, which the Commission intends to make available for use by unlicensed devices. Moreover, the Commission will allow unlicensed use of channel 37, subject to the development of the appropriate technical parameters to protect the incumbent Wireless Medical Telemetry Service (''WMTS'') and Radio Astronomy Service (''RAS'') from harmful interference, and allow television white space devices as well as wireless microphones to operate on any unused television channels in a market following the incentive auction. The Commission also intends to designate one unused channel in each area following the repacking process for use by wireless microphones and television white space devices.

594. The Commission also adopts measures to facilitate wireless microphone use of available spectrum in the reorganized UHF band. With regard to the 600 MHz Band, the Commission will allow broadcasters and cable programming networks to operate licensed wireless microphones in a portion of the duplex gap. In addition, the Commission will permit other wireless microphones to operate in the guard bands on an unlicensed basis. The Commission will initiate a proceeding to adopt technical standards to govern these uses. With regard to the remaining television spectrum, while there may no longer be two unused channels for wireless microphones in markets where those channels are currently used for that purpose, the Commission intends to designate one unused channel in each area following the auction for use by wireless microphones and television white space devices. The Commission also revises the rules for co-channel operations in the post-auction television bands to expand the areas where wireless microphones may operate. The Commission will initiate a proceeding in the near future to find additional spectrum for wireless microphone users in other spectrum bands in order to help address their long-term needs.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

595. No commenters directly responded to the IRFA. However, a number of commenters raised concerns about the impact on small businesses of various auction design issues. We have nonetheless addressed these concerns in the FRFA.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

596. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the adopted rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government 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.

597. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,388. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

598. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

599. In addition, the Commission has estimated the number of licensed noncommercial educational (''NCE'') television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

600. There are also 2,414 LPTV stations, including Class A stations, and 4,046 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

601. *Cable Television Distribution Services.* 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. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

602. *Cable Companies and Systems.* The Commission has also 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 approximately 1,100 cable operators nationwide, all but 10 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 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

603. *Cable System Operators.* The Communications Act of 1934, as amended, 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 1,100 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

604. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. To gauge small business prevalence for the DBS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

605. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small any company in this category which receives annual receipts of $35.5 million or less. Based on U.S. Census data for 2007, in that year 659 establishments operated for the entire year. Of that 659, 197 operated with annual receipts of $10 million a year or more. The remaining 462 establishments operated with annual receipts of less than $10 million. Based on this data, the Commission estimates that the majority of establishments operating in this industry are small.

606. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees. Thus, under that size standard, the majority of firms can be considered small.

607. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for all or part of that year. In that year, 488 establishments had fewer than 500 employees; and only 1 had more than 1000 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

608. *Wireless Telecommunications Carriers (except satellite).* The Census Bureau defines this category as follows: ''This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.'' The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite). The size standard for that category is that a business is 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, 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, we estimate that the majority of wireless firms can be considered small.

609. *Manufacturers of unlicensed devices.* In the context of this FRFA, manufacturers of Part 15 unlicensed devices that are operated in the UHF–TV band (channels 14–51) for wireless data transfer fall into the category of Radio and Television and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed the small business size standard for this category as firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees. Thus, under that size standard, the majority of firms can be considered small.

610. *Personal Radio Services/Wireless Medical Telemetry Service (''WMTS'').* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules. These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio

Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS''). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules adopted. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. 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. Thus under this category and the associated small business size standard, the Commission estimates that the majority of personal radio service and WMTS providers are small entities.

611. However, we note that many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base a more specific estimation of the number of small entities under an SBA definition that might be directly affected by our action.

612. *Radio Astronomy.* The Commission has not developed a definition for radio astronomy. However the SBA has established a category into which Radio Astronomy fits, which is: All Other Telecommunications. This industry ''comprises establishments 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.'' The size standard for all establishments engaged in this industry is that annual receipts of $30 million or less establish the firm as small. Based on data in the 2007 U.S. Census, in 2007 there were 2,623 establishments that operated for the entire year in the All Other Telecommunications category. Of those, 145 establishments operated with annual receipts of more than $10 million per year. The remaining 2,478 establishments operated with annual receipts of less than $10 million per year. Based on this data, the Commission estimates that the majority of establishments in the All Other Telecommunications category are small.

613. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' The SBA has developed a small business size standard for this category, which is: All such businesses having $30 million dollars or less in annual receipts. Census data for 2007 show that there were 9,478 establishments that operated that year. Of that number, 9,128 had annual receipts of $24,999,999 or less, and 350 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

614. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 31,549 common carrier fixed licensees and 89,633 private and public safety operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (''LMDS''), the Digital Electronic Message Service (''DEMS''), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of the RFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., a business is 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. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

615. *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. We previously estimated that of the 61 small business BRS auction winners, based on our review of licensing records, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission established three small business size standards that were used in Auction 86: (i) An entity with attributed average annual gross revenues that exceeded $15 million and do not exceed $40 million for the preceding three years was considered a small

business; (ii) an entity with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years was considered a very small business; and (iii) an entity with attributed average annual gross revenues that did not exceed $3 million for the preceding three years was considered an entrepreneur. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service.

616. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based educational broadcasting services. Since 2007, Wired Telecommunications Carriers have been 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.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's Universal Licensing System indicates that as of July 2013, there are 2,236 active EBS licenses. The Commission estimates that of these 2,236 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

617. *Radio Broadcasting.* The SBA defines a radio broadcast station as a small business if such station has no more than $35.5 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of 11,341 commercial radio stations have revenues of $35.5 million or less and thus qualify as small entities under the SBA definition. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

618. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

619. The projected reporting, recordkeeping, and other compliance requirements resulting from the Order will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum. Additionally, the reverse auction should benefit small entities that participate by providing a substantial infusion of income in exchange for spectrum usage rights, which broadcasters can use for new content and services. Similarly, by allowing unlicensed use in certain parts of the repurposed 600 MHz Band, the Commission will provide certainty and allow small entity equipment manufacturers to offer new services.

620. *Auction Application Requirements.* Similar to previous spectrum license auctions, all applicants wishing to participate in either the reverse or forward auction will be required to file pre-auction applications using the Commission's online electronic auction application system. Winning bidders in the forward auction will be required to file applications using the Commission's Universal Licensing System (ULS). For potential reverse auction bidders, the Commission requires submission of an application establishing their eligibility to participate, including license information and associated spectrum usage rights, certification of various qualifications, and information regarding station ownership. Applicants that are party to a channel sharing agreement must certify compliance with the Commission's media ownership rules, provide a copy of the executed agreement, and make other required certifications. No applications to participate in the reverse auction will be accepted if the applicant has failed to make these certifications by the initial deadline. Applicants will be provided a limited opportunity to cure certain minor defects and to resubmit a corrected application to participate. After the resubmission period has ended, an application to participate may be amended or modified to make minor changes or correct minor errors in the application to participate. Minor amendments may be subject to a deadline specified by public notice. Major amendments cannot be made to an application to participate after the initial filing deadline.

621. *Prohibition on Certain Communications.* Participants in both the reverse and the forward auction are required to report any potential violations of the Commission's prohibition on certain communications relating to the auction process. The Order extends existing rules applicable to participants in the forward auction

that prohibit certain communications among certain forward auction participants to cover communications between forward auction participants and potential reverse auction applicants. The Order adopts new rules providing that, beginning with the deadline for submitting applications and until the Commission releases the results of the incentive auction, all full power and Class A broadcast television licensees are prohibited from communicating any applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant. This prohibition extends to controlling interests, directors, officers, and members of a governing board, with exceptions for parties to a disclosed channel sharing agreement and where the parties share common control. This rule requires all violations to be reported immediately, and may subject parties to further investigation by the Commission or the Department of Justice.

622. *National Security Certifications.* To satisfy section 6004 of the Spectrum Act, reverse auction applicants, forward auction applicants, and forward auction winning bidders must file certifications of their compliance with the national security restrictions as set forth in 47 CFR 1.2204(c)(6) and 1.2105(a), as amended, and 47 CFR 27.12(b). This requirement extends to transactions in the secondary market: In any secondary market transaction applications involving 600 MHz Band licenses, applicants must certify to the Commission that neither they nor any party to the applications are persons barred from participating in an auction under this provision of the Spectrum Act. As such, in order to comply with this requirement, all reverse auction, forward auction, and secondary market applicants may require legal services to ensure compliance with section 6004 of the Spectrum Act.

623. *Repacking.* The Commission exercises its discretion to protect certain full power and Class A facilities in addition to those for which the statute mandates protection. The Commission generally limits its discretionary protection to facilities that are licensed by the Pre-Auction Licensing Deadline to be announced by the Media Bureau. Similarly, in order for a broadcaster to be a reverse auction eligible licensee, it must hold a license for the full power or Class A station it wishes to offer at auction on or before the Pre-Auction Licensing Deadline. To ensure a stable, accurate database, and to facilitate the repacking process, all full power and Class A television stations are required to verify and certify to the accuracy of the information contained in the Commission's Consolidated Database System (''CDBS'') with respect to their protected facilities. Prior to the start of the incentive auction, the Media Bureau will issue a Public Notice announcing each station's protected facility. All full power and Class A stations will be required to submit a form (to be developed by the Media Bureau) specifying any changes to the information contained in CDBS and certifying to the accuracy of the information in CDBS or provided on the form for their protected facility. Stations affected by the destruction of the World Trade Center may elect which of their facilities to be protected. The deadline for these stations to elect the facility to be protected is the Pre-Auction Licensing Deadline.

624. *Broadcast License Modification.* Once the reverse and forward auctions are complete and results from the repacking process are announced, full power and Class A stations assigned new channels must file minor change applications for construction permits using FCC Form 301, 301–CA, or 340. Stations have a three-month filing window, as opposed to the shorter standard period, to file these minor change applications or to seek a waiver for additional time. In these initial minor change applications, stations may propose transmission facilities that slightly extend their coverage contour under certain conditions. After the deadline for filing for these initial minor change applications, the Media Bureau will announce a filing window during which stations may propose expanded facilities, which are limited to minor changes, or alternate channel assignments, which will be considered major change applications and subject to the standard requirements. The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 302–DTV or 302–CA within three months of the date that the channel sharee station licensee receives its incentive payment. Compliance with these filing requirements may require stations to obtain legal, and, in the case of a construction permit application, engineering services.

625. *Broadcast Transition Deadlines.* A winning license relinquishment bidder must comply with the notification and cancellation procedures in 47 CFR 73.1750 and terminate operations on its pre-auction channel within three months of the date that the licensee receives its incentive payment. The licensee of a channel sharee station must comply with the notification and cancellation procedures in 47 CFR 73.1750 and terminate operations on its pre-auction channel within three months of the date that the licensee receives its incentive payment. The time allowed for full power and Class A stations reassigned to new channels to modify their facilities will vary. The Media Bureau will establish construction deadlines for such stations. A station reassigned to a new channel must cease operating on its pre-auction channel once such station begins operating on its post-auction channel or by the deadline specified in its construction permit for its post-auction channel, whichever occurs earlier, and in no event later than the end of the post-auction transition period, which is the 39-month period commencing upon the public release of the public notice specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels (''Post-Auction Transition Period''). A station may seek a single extension of up to six months of its original construction deadline. The extension request must be filed electronically in CDBS using FCC Form 337 no less than 90 days before the expiration of the construction permit. Licensees needing additional time beyond such a single extension of time to complete construction shall be subject to the tolling provisions in 47 CFR 73.3598. Stations may request Special Temporary Authority (''STA'') to operate with temporary facilities while they complete construction.

626. *Consumer Education Outreach.* As consumers will need to be informed if stations they view will be changing channels, the Commission will require all Transitioning Stations (i.e., full power and Class A stations moving to new channels or relinquishing their licenses) to air notifications for a minimum of 30 days prior to the date that the station will terminate operations on its pre-auction channel. These notifications will be a mix of PSAs and crawls, and must meet certain duration requirements. Transitioning stations that operate on a noncommercial educational (''NCE'') basis have the option to instead air 60 seconds per day of on-air consumer education PSAs, in variable timeslots, for 30 days prior to the station's termination of operations on its pre-auction channel. Licensees of Transitioning Stations, except for license relinquishment stations, must place a certification of compliance with these requirements in their online public file within 30 days after

beginning operations on their post-auction channels. License relinquishment stations must include the certification in their notification of discontinuation of service pursuant to 47 CFR 73.1750. Small entities may need legal and engineering services to comply with these requirements.

627. *MVPD Notification.* The Commission requires Transitioning Stations to provide notice to those MVPDs that: (1) No longer will be required to carry the station because it will cease operations or because of the relocation of a channel sharing sharee station; (2) currently carry and will continue to be obligated to carry a station that will change channels; or (3) will become obligated to carry a station due to a channel sharing relocation. The required notice must be provided in the form of a letter notification and contain the following information: (1) Date and time of any channel changes; (2) pre-auction and post-transition channel assignments; (3) modification, if any, to antenna position, location, or power levels; (4) stream identification information for channel sharing stations; and (5) engineering staff contact information. Should any of this information change during the station's transition, an amended notification must be sent. Transitioning Stations must provide notice within the following time frames: (1) For successful license relinquishment bidders, not less than 30 days prior to terminating operations; (2) for channel sharing sharee stations, not less than 30 days prior to terminating operations of the sharee's pre-auction channel; (3) for all channel sharing stations (i.e., both the sharer station and sharee station(s)), not less than 30 days prior to initiation of operations on the sharer channel; and (4) for all other stations transitioning to a new channel, including stations that are assigned to new channels in the repacking process and successful UHF-to-VHF and high-VHF-to-low-VHF bidders, not less than 90 days prior to the date on which they will begin operations on their reassigned channel. In addition, should a station's anticipated transition date change due to an unforeseen delay or change in transition plan, the station must send a further notice to affected MVPDs informing them of the new anticipated transition date.

628. *Broadcaster Relocation Reimbursement.* The Order adopts a reimbursement process for eligible broadcasters and MVPDs. Within three months of the Media and Wireless Telecommunications Bureaus releasing the *Channel Reassignment PN* eligible broadcasters and MVPDs are required to submit an estimated cost form providing an estimate of reasonably incurred relocation costs as well as required certifications. Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau. After completing all construction or reimbursable changes, broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Forms will include certifications that must be made by an owner or officer of the company under penalty of perjury under 18 U.S.C. § 1001. Broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund are required to submit progress reports at a date and frequency to be determined by the Media Bureau. Each broadcast television station licensee and MVPD that receives payment from the TV Broadcaster Relocation Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund. Further, the Commission or its authorized contractor will conduct audits of, data validations for, and site visits to entities that receive disbursements from the TV Broadcaster Relocation Fund, both during and following the three year Reimbursement Period. All relevant documentation must be provided to the Commission or its authorized contractor upon request. Small entities seeking reimbursement may require legal, engineering, or accounting services in order to comply with these recordkeeping and filing requirements.

629. *Service Rule Waiver.* Section 6403(b)(4)(B) of the Spectrum Act provides that broadcast licensees can, in lieu of reimbursement of relocation costs, receive a waiver of the Commission's rules to permit flexible use of their spectrum, subject to certain conditions. Such waiver requests will be evaluated on a case-by-case basis by the Media Bureau. Eligible broadcast licensees must file waiver requests during a 30-day window commencing upon the date that the *Channel Reassignment PN* is released. Eligible broadcast licensees will have ten days to notify the Commission whether it accepts the Commission's grant of the waiver. Licensees who accept a granted waiver will not qualify for reimbursement. Until the Commission grants and the licensee accepts the terms of a waiver, the licensee must still meet all requirements for obtaining reimbursement, including filing a timely estimated cost form. A licensee that is granted and accepts the terms of the waiver or a licensee with a pending waiver application must comply will all filing and notification requirements, construction schedules, and other post-auction transition deadlines. Broadcast licensees that intend to file for a waiver may require legal, engineering, or accounting services as well.

630. *Displacement of LPTV and TV translator stations and Relinquishment of Broadcast Auxiliary Station (''BAS'') Channels.* Licensees of operating LPTV and TV translator stations that are displaced by a broadcast television station or a wireless service provider or whose channel is reserved as a guard band are permitted to submit an application for displacement relief in a restricted filing window to be announced by the Media Bureau by public notice. LPTV and TV translator stations, the majority of which are small entities, will be affected by this transition. Stations may require legal or engineering services in order to make the required filings. In addition, TV STL, TV relay station, or TV translator relay station (BAS) licensees in the 600 MHz Band will be required to cease operations or relocate from the 600 MHz Band no later than the end of the Post-Auction Transition Period. BAS licensees may require legal or engineering services in order to make the required filings.

631. *Channel Sharing Operating Rules.* The Commission requires all Channel Sharing Agreements (''CSAs'') to include certain provisions outlining each licensee's rights and responsibilities, as well as other requirements, which must be filed with the station's reverse auction application. Additionally, all CSAs must include a provision affirming compliance with the requirements in this Order, the *Channel Sharing Report and Order* (*See* 77 FR 30423 (2012)), and Commission rules. The Commission may review CSA provisions and require modifications to

meet these requirements. These provisions are meant to help avoid disputes that could interrupt service and to ensure that each licensee is able to fulfill its independent obligation to comply with all pertinent statutory requirements and Commission rules. Since many broadcasters interested in CSAs may be small businesses, small entities may need legal, engineering, or other technical services to draft a CSA that complies with these contractual requirements.

632. *Notification of Commencement of Wireless Operations.* A wireless licensee assigned to frequencies in the 600 MHz Band must provide notice to LPTV and TV translator stations of its intent to commence wireless operations, and the likelihood of receiving harmful interference from the LPTV or TV translator station to such operations within the wireless licensee's licensed geographic service area. The new wireless licensees must: (i) Notify the LPTV or TV translator station in the form of a letter, via certified mail, return receipt requested; (ii) indicate the date the new wireless licensee intends to commence operations in areas where there is a likelihood of receiving harmful interference from the LPTV or TV translator station; and (iii) send such notification not less than 120 days in advance of the commencement date. A wireless licensee assigned to frequencies in the 600 MHz Band must notify the BAS licensee of its intent to commence wireless operations and the likelihood of harmful interference from the BAS licensee to those operations within the wireless licensee's licensed geographic service area. The wireless licensee must: (i) Notify the licensee of the TV STL, TV relay station, or TV translator relay station in the form of a letter, via certified mail, return receipt requested; and (ii) send such notification not less than 30 days in advance of the approximate date of commencement of such operations. 600 MHz Band licensees may require legal and engineering services to comply with these requirements.

633. *Wireless Technical and Service Rules.* In general, the Commission adopts service rules contained in Part 27 of the Commission's rules. The Commission adopted technical rules for the 600 MHz Band similar to the Lower 700 MHz Band, contained in Part 27 of the Commission's rules, including out-of-band emission (''OOBE'') limits, antenna height limits, co-channel interference limits, and slightly modified power limits. In order to promote interoperability across the 600 MHz Band, all user equipment certified for this band must be capable of operating throughout the band. In order to comply with these rules, 600 MHz Band licensees may require engineering and legal services.

634. *Coordination with RAS Observatories.* Coordination requirements apply prior to the commencement of operation of base and fixed stations in the 600 MHz Band in proximity to certain RAS observatories. 600 MHz Band licensees may require legal and engineering services to comply with this requirement.

635. *Performance Requirements.* All 600 MHz licensees will be required to file a construction notification and certify that they have met the applicable performance benchmarks. In particular, licensees of the 600 MHz Band must demonstrate that they meet certain build-out requirements at two performance benchmarks. If a licensee fails to meet the interim benchmark, its final benchmark and license term accelerate by two years; failing to meet the final benchmark results in automatic termination of the license. Due to the possibility that some licenses will have impaired areas, while the same build out benchmarks apply, a licensee may meet its requirement by providing coverage to population in non-impaired service areas. Licensees who hold licenses with impaired areas must provide an explanation to the Commission why they cannot serve the entire license area or meet the performance requirement at the relevant construction benchmark. These entities may require legal, engineering, or survey services in order to comply with all reporting, recordkeeping, and other requirements.

636. *Other Regulatory Matters.* In order to renew a license, 600 MHz licensees will be required to file a license renewal application and make the necessary showings to qualify for renewal of the license. In addition, a 600 MHz licensee must notify the Commission of certain changes. Specifically, notification is required by licensees if they change their regulatory status, their foreign ownership status, or if they permanently discontinue service. A 600 MHz Band licensee that permanently discontinues service must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. 600 MHz Band licensees may require legal and engineering services to comply with these requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

637. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 rule 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.''

638. *Facilities Protected in the Repacking.* The Spectrum Act mandates all reasonable efforts to preserve the ''coverage area and population served'' of full power and Class A facilities licensed as of the date of the Spectrum Act's enactment. The Commission interprets the Spectrum Act to allow it to afford discretionary protection to several additional categories of facilities. While some commenters suggest that the Commission afford protection to other facilities, including LPTV and TV translator stations, the Commission determines that the Spectrum Act does not mandate such protection, and affording discretionary protection to such stations would not be consistent with the goals of the Spectrum Act. LPTV and TV translator stations are secondary to full power stations, and affording these stations protection would severely limit recovery of spectrum and frustrate the purpose of the Spectrum Act. The Commission understands the potential impact of the incentive auction on LPTV and TV translator stations, among others, and will take steps to mitigate such impact.

639. *Reverse Auction Participation.* The Commission permits voluntary participation generally to all licensees of commercial and NCE full power and Class A stations, and provides several options for spectrum usage rights that a participant may bid to relinquish. Allowing options such as channel sharing, UHF-to-VHF moves, and high-VHF-to-low-VHF moves will encourage participation by small entities, which may stand to receive substantial proceeds while continuing to broadcast. In addition, the Commission will offer a license relinquishment bid option regardless of whether it may lead to a loss of service. This will allow voluntary participation by all eligible

licensees, and remove obstacles that small entities may face in deciding whether to participate.

640. *Confidentiality.* Information regarding the identity of reverse auction applicants will be protected from disclosure for a period of time. To comport with the Spectrum Act's requirements, the Commission will protect the confidentiality of Commission-held data on broadcast television licensees participating in the reverse auction, regardless of whether their applications are complete and in compliance with the Commission's rules. Confidential information pertaining to unsuccessful bids will continue to be protected until two years after the effective date of spectrum reassignments and reallocations. When the spectrum reassignments and reallocations become effective, the Commission will disclose the identities of the winning bidders and their winning bid amounts. The Commission further amends its FOIA disclosure rules to accommodate the confidentiality rules adopted. While some commenters urge the Commission to protect reverse auction participant identities in perpetuity, the Commission determines that doing so would not be a reasonable step necessary to protect broadcaster data. The Commission determines that adopting the two year confidentiality rule best balances protections for broadcasters with the transparency needed to maintain public trust in the auction process.

641. *Forward Auction Participation.* To assist small entities in competitive bidding in the forward auction, the Order adopts an open eligibility standard as mandated in section 6404 of the Spectrum Act to further broad participation in the incentive auction. In addition, the same small business size standards that were adopted in the 700 MHz Band were adopted for the 600 MHz Band, as well as bidding credits that are set forth in the standardized schedule in Part 1 of the Commission's rules. Specifically, the Order defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The Commission also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent for the 600 MHz Band. The Commission will initiate a separate proceeding to review its Part 1 designated entity rules. In addition, the Commission adopts PEA geographic license sizes that will encourage entry by providers, including small providers, that contemplate offering wireless broadband service on a localized basis, yet at the same time not precluding carriers that plan to provide service on a much larger geographic scale. While some small and rural wireless carriers urge the Commission to license, wholly or in part, on a CMA basis, the Commission concludes that licensing using PEAs throughout the country strikes the appropriate balance and will allow both smaller and larger wireless carriers to obtain licenses that best align with their respective business plans. Further, licensing markets using a variety of sizes (for example, mixing EAs and CMAs) would conflict with the Commission's goal of offering spectrum blocks as interchangeable as possible in order to speed up the forward auction bidding process.

642. *Band Plan Matters.* While the Commission will not know which specific 600 MHz Band Plan scenario will be employed until the conclusion of the incentive auction, each scenario includes guard bands to prevent harmful interference between licensed services. Specifically, the guard bands will protect against interference between uplink and downlink wireless services, between wireless services and broadcast television services, and between wireless services and RAS and WMTS services operating on channel 37, if enough spectrum is repurposed. The Commission concludes that these guard bands are technically reasonable, and will help prevent harmful interference to entities of all sizes operating adjacent to repurposed spectrum. Further, by adopting a fully-paired band plan rather than licensing some spectrum blocks as supplemental downlink, smaller carriers and new entrants will be able to obtain much-needed low frequency, paired spectrum.

643. *Repacking of the Television Band.* The Commission intends to optimize any final channel assignments to minimize relocation costs for eligible broadcasters and MVPDs. The Spectrum Act caps the TV Broadcaster Relocation Fund at $1.75 billion and requires the Commission to make any reimbursements within three years of the completion of the forward auction. Because eligible broadcasters and MVPDs will be eligible for an initial allocation based on estimated costs, they should not have to rely significantly on self-financing or outside financing. Further, delaying the ''close'' of the forward auction until after reassigned stations file construction permits, as some broadcasters suggest, does not reasonably comport with the statutory mandate.

644. *Partitioning, Disaggregation, and Leasing.* The Commission concludes that providing flexibility in the secondary markets, by allowing licensees to partition, disaggregate, and/or lease spectrum, helps smaller carriers acquire the specific spectrum rights that they need to serve small, targeted markets. As in other bands, this flexibility can facilitate the efficient use of spectrum, promote competition, and expedite provision of services in areas that might not otherwise receive service in the near term.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Rules

645. None.

7. Report to Congress

646. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

8. Report to Small Business Administration

647. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

B. Paperwork Reduction Act Analysis

648. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

649. We have assessed the effects of the policies adopted in the Order with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees by providing them with options for voluntarily relinquishing broadcast spectrum usage rights or for gaining access to valuable repurposed

spectrum. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA.

C. Delegation To Correct Rules

650. We delegate authority to the Wireless Telecommunications Bureau, Media Bureau, International Bureau, and Office of Engineering and Technology, as appropriate, to make corrections to the rules that are adopted in this Order as necessary to conform them to the text of this Order. We note that any entity that disagrees with a rule correction made on delegated authority will have the opportunity to file an Application for Review by the full Commission.

VII. Ordering Clauses

651. It is ordered, pursuant to the authority found in Sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, and sections 6004, 6402, 6403, 6404, and 6407 of Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454, the Report and Order in GN Docket No. 12–268 is adopted.

652. It is further ordered that the Commission's rules are hereby amended.

653. It is further ordered that the rules adopted herein will become effective 60 days after the date of publication in the **Federal Register**, except for those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

654. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Order in GN Docket No. 12–268, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

655. It is further ordered that the Commission shall send a copy of the Order in GN Docket No. 12–268 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

47 CFR Parts 1, 2, 15, 27, 73, and 74

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 15, 27, 73, and 74 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.457 is amended by adding paragraph (d)(1)(ix) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(ix) Confidential Broadcaster Information, as defined in § 1.2206(d) of this chapter, submitted by a broadcast television licensee in a broadcast television spectrum reverse auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) (the ''Spectrum Act''), or in the application to participate in such a reverse auction, is not routinely available for public inspection until the reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective or until two years after public notice that the reverse auction is complete and that no such reassignments and reallocations shall become effective. In the event that reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective, Confidential Broadcaster Information pertaining to any unsuccessful reverse auction bid or pertaining to any unsuccessful application to participate in such a reverse auction will not be routinely available for public inspection until two years after the effective date.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 4. Section 1.2101 is revised to read as follows:

§ 1.2101 Purpose.

The provisions of §§ 1.2101 through 1.2114 implement section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) and subsequent amendments.

§ 1.2102 [Amended]

■ 5. Section 1.2102 is amended by removing and reserving paragraph (c).

■ 6. Section 1.2103 is revised to read as follows:

§ 1.2103 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to any competitive bidding for initial licenses, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures allowing for bids for specific items, bids for generic items in one or more categories of items, or bids for one or more aggregations of items.

(iii) Procedures allowing for bids that specify a price, indicate demand at a specified price, or provide other information as specified by competitive bidding policies, rules, and procedures.

(iv) Procedures allowing for bids that are contingent on specified conditions, such as other bids being accepted or for packages of licenses being awarded.

(v) Procedures to collect bids in one or more stages, including procedures for transitions between stages.

(vi) Procedures for whether, when, and how bids may be modified during the auction.

(2) *Procedures for assigning winning bids.* (i) Procedures that take into account one or more factors in addition to the submitted bid amount, including but not limited to the amount of bids submitted in separate competitive bidding.

(ii) Procedures to assign specific items to bidders following bidding for quantities of generic items.

(iii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments.* Procedures to determine the amount of any payments made to or by winning bidders consistent with other auction design choices.

■ 7. Section 1.2104 is amended by revising paragraphs (e) and (j) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(e) *Stopping procedures.* Before or during an auction, procedures may be established regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

* * * * *

(j) *Bid apportionment*—(1) *Apportioned license bid.* The Commission may specify a method for apportioning a bid among portions of the license (i.e., portions of the license's service area or bandwidth, or both) when necessary to compare a bid on the original license or portions thereof with a bid on a corresponding reconfigured license for purposes of the Commission's rules or procedures, such as to calculate a bid withdrawal or default payment obligation in connection with the bid.

(2) *Apportioned package bid.* The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding. The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license when the bid amount is needed to determine the size of a designated entity bidding credit (see § 1.2110(f)(1) and (f)(2)), a new entrant bidding credit (see § 73.5007 of this chapter), a bid withdrawal or default payment obligation (see § 1.2104(g)), a tribal land bidding credit limit (see § 1.2110(f)(3)(iv)), or a size-based bidding credit unjust enrichment payment obligation (see § 1.2111(d), (e)(2), and (e)(3)), or for any other determination required by the Commission's rules or procedures.

■ 8. Section 1.2105 is amended by revising paragraphs (a)(2)(i), (a)(2)(xii), and (c)(6), and adding paragraph (c)(8) and notes 1 and 2 to paragraph (c) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of certain communications.

(a) * * *

(2) * * *

(i) Identification of each license, or category of licenses, on which the applicant wishes to bid.

* * * * *

(xii) For auctions required to be conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) or in which any spectrum usage rights for which licenses are being assigned were made available under 47 U.S.C. 309(j)(8)(G)(i), certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (a)(2)(ii) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

* * * * *

(c) * * *

(6) A party that makes or receives a communication prohibited under paragraphs (c)(1) or (8) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

* * * * *

(8) Prohibition of certain communications for the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(i) For the purposes of the prohibition described in paragraphs (c)(8)(ii) and (iii) of this section, the term *forward auction applicant* is defined the same as the term *applicant* is defined in paragraph (c)(7) of this section, and the terms *full power broadcast television licensee* and *Class A broadcast television licensee* are defined the same as those terms are defined in § 1.2205(a)(1).

(ii) Except as provided in paragraph (c)(8)(iii) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96), beginning on the short-form application filing deadline for the forward auction and until the results of the incentive auction are announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee.

(iii) The prohibition described in paragraph (c)(8)(ii) of this section does not apply to communications between a forward auction applicant and a full power or Class A broadcast television licensee if a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant, as of the deadline for submitting short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction.

Note 1 to Paragraph (c): For the purposes of paragraph (c), ''controlling interests'' include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

Note 2 to Paragraph (c): The prohibition described in paragraph (c)(8)(ii) of this section applies to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in the

forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction, and any additional such parties at any subsequent point prior to the announcement by public notice of the results of the incentive auction. Thus, if, for example, a forward auction applicant appoints a new officer after the short-form application deadline, that new officer would be subject to the prohibition in paragraph (c)(8)(ii) of this section, but would not be included within the exception described in paragraph (c)(8)(iii).

■ 9. Section 1.2106 is amended by revising paragraph (a) to read as follows:

§ 1.2106 Submission of upfront payments.

(a) Applicants for licenses subject to competitive bidding may be required to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a public notice. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than the amount that otherwise would be required. No interest will be paid on upfront payments.

* * * * *

■ 10. Section 1.2114 is amended by revising paragraph (e) to read as follows:

§ 1.2114 Reporting of eligibility event.

* * * * *

(e) *Public notice of application.* Applications under this section will be placed on an informational public notice on a weekly basis (see § 1.933(a)).

* * * * *

■ 11. Part 1 subpart Q is amended by adding §§ 1.2200 through 1.2209 under added undesignated center heading ''Broadcast Television Spectrum Reverse Auction'' as follows:

Subpart Q—Competitive Bidding Proceedings

* * * * *

Broadcast Television Spectrum Reverse Auction

Sec.

1.2200 Definitions.
1.2201 Purpose.
1.2202 Competitive bidding design options.
1.2203 Competitive bidding mechanisms.
1.2204 Applications to participate in competitive bidding.
1.2205 Prohibition of certain communications.
1.2206 Confidentiality of Commission-held data.
1.2207 Two competing participants required.
1.2208 Public notice of auction completion and auction results.
1.2209 Disbursement of incentive payments.

Broadcast Television Spectrum Reverse Auction

§ 1.2200 Definitions.

For purposes of §§ 1.2200 through 1.2209:

(a) *Broadcast television licensee.* The term *broadcast television licensee* means the licensee of

(1) A full-power television station, or

(2) A low-power television station that has been accorded primary status as a Class A television licensee under § 73.6001(a) of this chapter.

(b) *Channel sharee.* The term *channel sharee* means a broadcast television licensee that relinquishes all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee.

(c) *Channel sharer.* The term *channel sharer* means a broadcast television licensee that shares its television channel with a channel sharee.

(d) *Channel sharing bid.* The term *channel sharing bid* means a bid to relinquish all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee.

(e) *Forward auction.* The term *forward auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(c) of the Spectrum Act.

(f) *High-VHF-to-low-VHF bid.* The term *high-VHF-to-low-VHF bid* means a bid to relinquish all spectrum usage rights with respect to a high very high frequency (''VHF'') television channel (channels 7 through 13) in return for receiving spectrum usage rights with respect to a low VHF television channel (channels 2 through 6).

(g) *License relinquishment bid.* The term *license relinquishment bid* means a bid to relinquish all spectrum usage rights with respect to a particular television channel without receiving in return any spectrum usage rights with respect to another television channel.

(h) *NCE station.* The term *NCE station* means a noncommercial educational television broadcast station as defined in § 73.621 of this chapter.

(i) *Reverse auction.* The term *reverse auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(a) of the Spectrum Act.

(j) *Reverse auction bid.* The term *reverse auction bid* includes a license relinquishment bid, a UHF-to-VHF bid, a high-VHF-to-low-VHF bid, a channel sharing bid, and any other reverse auction bids permitted.

(k) *Spectrum Act.* The term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(l) *UHF-to-VHF bid.* The term *UHF-to-VHF bid* means a bid to relinquish all spectrum usage rights with respect to an ultra-high frequency (''UHF'') television channel in return for receiving spectrum usage rights with respect to a high VHF television channel or a low VHF television channel.

§ 1.2201 Purpose.

The provisions of §§ 1.2200 through 1.2209 implement section 6403 of the Spectrum Act, which requires the Commission to conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402 of the Spectrum Act.

§ 1.2202 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to conducting competitive bidding in the reverse auction, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures for the reverse auction may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures for collecting bids for multiple reverse auction bid options.

(iii) Procedures allowing for bids that specify a price for a reverse auction bid option, indicate demand at a specified price, or provide other information as specified by competitive bidding policies, rules, and procedures.

(iv) Procedures allowing for bids that are contingent on specified conditions, such as other bids being accepted.

(v) Procedures to collect bids in one or more stages, including procedures for transitions between stages.

(vi) Procedures for whether, when, and how bids may be modified during the auction.

(2) *Procedures for assigning winning bids.* (i) Procedures that take into account one or more factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.

(ii) Procedures to evaluate the technical feasibility of assigning a winning bid.

(A) Procedures that utilize mathematical computer optimization software, such as integer programming, to evaluate bids and technical feasibility, or that utilize other decision routines, such as sequentially evaluating bids using a ranking based on specified factors.

(B) Procedures that combine computer optimization algorithms with other decision routines.

(iii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments.* (i) Procedures to determine the amount of any incentive payments made to winning bidders consistent with other auction design choices.

(ii) The amount of proceeds shared with a broadcast television licensee will not be less than the amount of the licensee's winning bid in the reverse auction.

§ 1.2203 Competitive bidding mechanisms.

(a) *Public notice of competitive bidding procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of the reverse auction, including without limitation:

(1) *Sequencing.* The sequencing with which the reverse auction and the related forward auction assigning new spectrum licenses will occur.

(2) *Reserve price.* Reserve prices, either disclosed or undisclosed, so that higher bids for various reverse auction bid options would not win in the reverse auction. Reserve prices may apply individually, in combination, or in the aggregate.

(3) *Opening bids and bid increments.* Maximum or minimum opening bids, and by announcement before or during the reverse auction, maximum or minimum bid increments in dollar or percentage terms.

(4) *Activity rules.* Activity rules that require a minimum amount of bidding activity.

(b) *Binding obligation.* A bid is an unconditional, irrevocable offer by the bidder to fulfill the terms of the bid. The Commission accepts the offer by identifying the bid as winning. A bidder has a binding obligation to fulfill the terms of a winning bid. A winning bidder will relinquish spectrum usage rights pursuant to the terms of any winning bid by the deadline set forth in § 73.3700(b)(4) of this chapter.

(c) *Stopping procedures.* Before or during the reverse auction, procedures may be established regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(d) *Auction delay, suspension, or cancellation.* By public notice or by announcement during the reverse auction, the auction may be delayed, suspended, or cancelled in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.2204 Applications to participate in competitive bidding.

(a) *Public notice of the application process.* All applications to participate must be filed electronically. The dates and procedures for submitting applications to participate in the reverse auction shall be announced by public notice.

(b) *Applicant.* The applicant identified on the application to participate must be the broadcast television licensee that would relinquish spectrum usage rights if it becomes a winning bidder. In the case of a channel sharing bid, the applicant will be the proposed channel sharee.

(c) *Information and certifications provided in the application to participate.* An applicant may be required to provide the following information in its application to participate in the reverse auction:

(1) The following identifying information:

(i) If the applicant is an individual, the applicant's name and address. If the applicant is a corporation, the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, the name, citizenship, and address of all general partners, and, if a general partner is not a natural person, then the name and title of a responsible person for that partner, as well. If the applicant is a trust, the name and address of the trustee. If the applicant is none of the above, it must identify and describe itself and its principals or other responsible persons;

(ii) Applicant ownership and other information as set forth in § 1.2112(a); and

(iii) List, in the case of a non-profit entity, the name, address, and citizenship of each member of the governing board and of any educational institution or governmental entity with a controlling interest in the applicant, if applicable.

(2) The identity of the person(s) authorized to take binding action in the bidding on behalf of the applicant.

(3) For each broadcast television license for which the applicant intends to submit reverse auction bids:

(i) The identity of the station and its television channel;

(ii) Whether it is a full-power or Class A television station;

(iii) If the license is for a Class A television station, certification under penalty of perjury that it is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station;

(iv) Whether it is an NCE station and, if so, whether it operates on a reserved or non-reserved channel;

(v) The types of reverse auction bids that the applicant may submit;

(vi) Whether the license for the station is subject to a non-final revocation order, has expired and is subject to a non-final cancellation order, or if for a Class A station is subject to a non-final downgrade order and, if the license is subject to such a proceeding or order, then an acknowledgement that the Commission will place all of its auction proceeds into escrow pending the final outcome of the proceeding or order; and

(vii) Any additional information required to assess the spectrum usage rights offered.

(4) For each broadcast television license for which the applicant intends to submit a license relinquishment bid:

(i) Whether it will control another broadcast station if it becomes a winning bidder and terminates operations; and

(ii) If it will control another broadcast station, an acknowledgement that it will remain subject to any pending license renewal, as well as any enforcement action, against the station offered; or

(iii) If it will not control another broadcast station, an acknowledgement that the Commission will place a share of its auction proceeds into escrow to cover any potential forfeiture costs associated with any pending license

renewal or any pending enforcement action against the station offered.

(5) For each broadcast television license for which the applicant intends to submit a channel sharing bid:

(i) The identity of the channel sharer and the television channel the applicant has agreed to share;

(ii) Any required information regarding the channel sharing agreement, including a copy of the executed channel sharing agreement;

(iii) Certification under penalty of perjury that the channel sharing agreement is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel;

(iv) Certification under penalty of perjury that its operation from the shared channel facilities will not result in a change to its Designated Market Area;

(v) Certification under penalty of perjury that it can meet the community of license coverage requirement set forth in § 73.625(a) of this chapter from the shared channel facilities or, if not, that the new community of license for its shared channel facilities either meets the same or a higher allotment priority as its current community; or, if no community meets the same or higher allotment priority, provides the next highest priority;

(vi) Certification under penalty of perjury that the proposed channel sharing arrangement will not violate the multiple ownership rules, set forth in § 73.3555 of this chapter, based on facts at the time the application is submitted; and

(vii) Certification by the channel sharer under penalty of perjury with respect to the certifications described in paragraphs (c)(3)(iii), (c)(5)(iii), and (c)(5)(vi) of this section.

(6) Certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (c)(1) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

(7) Certification that the applicant agrees that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.

(8) Certification that the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers by the applicant.

(9) Certification that the individual submitting the application to participate and providing the certifications is authorized to do so on behalf of the applicant, and if such individual is not an officer, director, board member, or controlling interest holder of the applicant, evidence that such individual has the authority to bind the applicant.

(10) Certification that the applicant is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the license(s) identified in the application to participate.

(11) Such additional information as may be required.

(d) *Application processing.* (1) Any timely submitted application to participate will be reviewed for completeness and compliance with the Commission's rules. No untimely applications to participate shall be reviewed or considered.

(2) Any application to participate that does not contain all of the certifications required pursuant to this section is unacceptable for filing, cannot be corrected subsequent to the application filing deadline, and will be dismissed with prejudice.

(3) Applicants will be provided a limited opportunity to cure specified defects and to resubmit a corrected application to participate. During the resubmission period for curing defects, an application to participate may be amended or modified to cure identified defects or to make minor amendments or modifications. After the resubmission period has ended, an application to participate may be amended or modified to make minor changes or correct minor errors in the application to participate. Minor amendments may be subject to a deadline specified by public notice. Major amendments cannot be made to an application to participate after the initial filing deadline. Major amendments include, but are not limited to, changes in ownership of the applicant that would constitute an assignment or transfer of control, changes to any of the required certifications, and the addition or removal of licenses identified on the application to participate for which the applicant intends to submit reverse auction bids. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application.

(4) Applicants that fail to correct defects in their applications to participate in a timely manner as specified by public notice will have their applications to participate dismissed with no opportunity for resubmission.

(5) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications to participate. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application to participate continues until they are made.

(e) *Notice to qualified and non-qualified applicants.* Each applicant will be notified as to whether it is qualified or not qualified to participate in the reverse auction.

§ 1.2205 Prohibition of certain communications.

(a) *Definitions.* (1) For the purposes of this section, a *full power broadcast television licensee,* or a *Class A broadcast television licensee,* shall include all controlling interests in the licensee, and all officers, directors, and governing board members of the licensee.

(2) For the purposes of this section, the term *forward auction applicant* is defined the same as the term *applicant* is defined in § 1.2105(c)(7).

(b) *Certain communications prohibited.* (1) Except as provided in paragraph (b)(2) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, beginning on the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction are announced by public notice, all full power and Class A broadcast television licensees are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to the following:

(i) Communications between full power or Class A broadcast television licensees if they share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction;

(ii) Communications between a forward auction applicant and a full power or Class A broadcast television licensee if a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant, as of the deadline for submitting short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction; and

(iii) Communications regarding reverse auction applicants' (but not forward auction applicants') bids and bidding strategies between parties to a channel sharing agreement executed prior to the deadline for submitting applications to participate in the reverse auction and disclosed on a reverse auction application.

(c) *Duty to report potentially prohibited communications.* A party that makes or receives a communication prohibited under paragraph (b) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made.

(d) *Procedures for reporting potentially prohibited communications.* Reports under paragraph (c) of this section shall be filed as directed in public notices detailing procedures for bidding in the incentive auction. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

(e) *Violations.* A party who is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, in addition to any other applicable sanctions, may be subject to forfeiture of its winning bid incentive payment and revocation of its licenses, where applicable, and may be prohibited from participating in future auctions.

Note 1 to § 1.2205: References to ''full power broadcast television licensees'' and ''Class A broadcast television licensees'' are intended to include all broadcast television licensees that are or could become eligible to participate in the reverse auction, including broadcast television licensees that may be parties to a channel sharing agreement.

Note 2 to § 1.2205: For the purposes of this section, ''controlling interests'' include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

Note 3 to § 1.2205: The prohibition described in § 1.2205(b)(1) applies to controlling interests, officers, directors, and governing board members of a full power or Class A broadcast television licensee as of the deadline for submitting applications to participate in the reverse auction, and any additional such parties at any subsequent point prior to the announcement by public notice of the results of the incentive auction. Thus, if, for example, a full power or Class A broadcast television licensee appoints a new officer after the application deadline, that new officer would be subject to the prohibition in § 1.2205(b)(1), but would not be included within the exceptions described in §§ 1.2205(b)(2)(i) and (ii).

§ 1.2206 Confidentiality of Commission-held data.

(a) The Commission will take all reasonable steps necessary to protect all Confidential Broadcaster Information for all reverse auction applicants from the time the broadcast television licensee applies to participate in the reverse auction until the reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective or until two years after public notice that the reverse auction is complete and that no such reassignments and reallocations shall become effective.

(b) In addition, if reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective, the Commission will continue to take all reasonable steps necessary to protect Confidential Broadcaster Information pertaining to any unsuccessful reverse auction bid and pertaining to any unsuccessful application to participate in the reverse auction until two years after the effective date.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission may disclose Confidential Broadcaster Information if required to do so by law, such as by court order.

(d) *Confidential Broadcaster Information* includes the following Commission-held data of a broadcast television licensee participating in the reverse auction:

(1) The name of the applicant licensee;

(2) The licensee's channel number, call sign, facility identification number, and network affiliation; and

(3) Any other information that may reasonably be withheld to protect the identity of the licensee, as determined by the Commission.

§ 1.2207 Two competing participants required.

The Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of the proceeds from the related forward auction assigning new spectrum licenses unless at least two competing licensees participate in the reverse auction.

§ 1.2208 Public notice of auction completion and auction results.

Public notice shall be provided when the reverse auction is complete and when the forward auction is complete. With respect to the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, public notice shall be provided of the results of the reverse auction, forward auction, and repacking, and shall indicate that the reassignments of television channels and reallocations of broadcast television spectrum are effective.

§ 1.2209 Disbursement of incentive payments.

A winning bidder shall submit the necessary financial information to facilitate the disbursement of the winning bidder's incentive payment. Specific procedures for submitting financial information, including applicable deadlines, will be set out by public notice.

■ 12. Section 1.9005 is amended by adding paragraph (kk) to read as follows:

§ 1.9005 Included services.

* * * * *

(kk) The 600 MHz band (part 27 of this chapter).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 13. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 14. Section 2.106 is amended by revising page 28 as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

456-459 FIXED MOBILE 5.286AA 5.271 5.287 5.288			456-459 5.287 US64 US288	456-460 FIXED LAND MOBILE 5.287 US64 US288 NG32 NG112 NG124 NG148	Public Mobile (22) Maritime (80) Private Land Mobile (90) MedRadio (95I)
459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460		
460-470 FIXED MOBILE 5.286AA Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 5.290			460-470 Meteorological-satellite (space-to-Earth) 5.287 US73 US209 US288 US289	460-462.5375 FIXED LAND MOBILE US209 US289 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE US289	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 US73 US209 US288 US289 NG124	Maritime (80) Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 US288 US289	Maritime (80) Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE US73 US288 US289 NG124	Maritime (80) Private Land Mobile (90)
470-790 BROADCASTING 5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311A 5.312	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-512 FIXED LAND MOBILE BROADCASTING NG5 NG14 NG66 NG115 NG149	Public Mobile (22) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307		512-608 FIXED MOBILE BROADCASTING NG5 NG14 NG115 NG149	Wireless Communications (27) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	610-890 FIXED MOBILE 5.313A 5.317A BROADCASTING 5.149 5.305 5.306 5.307 5.311A 5.320	608-614 LAND MOBILE (medical telemetry and medical telecommand) RADIO ASTRONOMY US74 US246		Personal Radio (95)
	614-698 BROADCASTING Fixed Mobile 5.293 5.309 5.311A		614-698	614-698 FIXED MOBILE BROADCASTING NG5 NG14 NG115 NG149	Wireless Communications (27) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)

■ 15. Section 2.1033 is amended by adding paragraph (c)(19)(iii) to read as follows:

§ 2.1033 Application for certification.

(c) * * *

(19) * * *

(iii) 600 MHz band shall include a statement indicating compliance with § 27.75 of this chapter.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 16. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 17. Section 15.707 is amended by redesignating paragraph (a) as (a)(1) and adding paragraph (a)(2) to read as follows:

§ 15.707 Permissible channels of operation.

(a)(1) * * *

(2) *TVBD operations in 600 MHz band.* TVBDs may operate on frequencies in the 600 MHz Band as defined in part 27 of this chapter in areas where 600 MHz Band licensees have not commenced operations.

* * * * *

■ 18. Section 15.713 is amended by adding paragraphs (b)(2)(iv) and (h)(10) to read as follows:

§ 15.713 TV bands database.

(b) * * *

(2) * * *

(iv) 600 MHz band operations under part 27 of this chapter in areas where the licensee has commenced operations.

* * * * *

(h) * * *

(10) 600 MHz band operations under part 27 of this chapter in areas where the licensee has commenced operations.

(i) License area of the 600 MHz band licensee, as defined under part 27 of this chapter;

(ii) Identification of the frequencies on which the part 27 600 MHz wireless licensee has commenced operations;

(iii) Call sign.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 19. The authority citation for part 27 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 20. Section 27.1 is amended by adding paragraph (b)(14) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(14) Spectrum in the 470–698 MHz UHF band that has been reallocated and redesignated for flexible fixed and mobile use pursuant to section 6403 of the Spectrum Act. The specific frequencies and number of channel blocks will be determined in light of further proceedings pursuant to Docket No. 12–268 and the rule will be updated accordingly pursuant to a future public notice.

* * * * *

■ 21. Section 27.4 is amended by adding the definitions ''*600 MHz service*'', ''*Post-auction transition period*'', and ''Spectrum Act'' in alphanumerical order to read as follows:

§ 27.4 Terms and definitions.

600 MHz service. A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5(l).

* * * * *

Post-auction transition period. The 39-month period commencing upon the public release of the Channel Reassignment Public Notice as defined in § 73.3700(a) of this chapter.

* * * * *

Spectrum Act. The term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

* * * * *

■ 22. Section 27.5 is amended by adding paragraph (l) to read as follows:

§ 27.5 Frequencies.

* * * * *

(l) *600 MHz band.* In accordance with the terms and conditions established in Docket No. 12–268, pursuant to section 6403 of the Spectrum Act, paired channel blocks of 5+5 megahertz are available for assignment on a Partial Economic Area basis. The specific frequencies and number of channel blocks will be determined in light of further proceedings pursuant to Docket No. 12–268 and the rule will be updated accordingly pursuant to a future public notice.

■ 23. Section 27.6 is amended by adding paragraph (l) to read as follows:

§ 27.6 Service areas.

* * * * *

(l) *600 MHz band.* Service areas for the 600 MHz band are based on Partial Economic Areas (PEAs), as defined by Public Notice: ''Wireless Telecommunications Bureau Provides Details About Partial Economic Areas,'' DA 14–759, dated June 2, 2014. The service areas of PEAs that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline. The service area of the Gulf of Mexico PEA that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. Maps of the PEAs and the **Federal Register** notice that established the 416 PEAs are available for public inspection and copying at the Reference Center, Room CY A–257, 445 12th St. SW., Washington, DC 20554. These maps and data are also available on the FCC Web site at: *http://www.fcc.gov/oet/info/maps/areas/.* The specific title, reference number, and date of the public notice will be determined in light of further proceedings pursuant to Docket No. 12–268 and the rule will be updated accordingly.

■ 24. Section 27.11 is amended by adding paragraph (k) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(k) *600 MHz band.* Initial authorizations for the 600 MHz band will be based on Partial Economic Areas (PEAs), as specified in § 27.6(1), and, shall be paired channels that each consist of a 5 megahertz channel block in the 600 MHz downlink band, paired with a 5 megahertz channel block in the 600 MHz uplink band. The specific frequencies and number of channel blocks will be determined in light of further proceedings pursuant to Docket No. 12–268 and the rule will be updated accordingly pursuant to a future public notice.

■ 25. Section 27.13 is amended by adding paragraph (l) to read as follows:

§ 27.13 License period.

* * * * *

(l) *600 MHz band.* Authorizations for the 600 MHz band will have an initial term not to exceed twelve years from the date of issuance and ten years from the date of any subsequent license renewal.

■ 26. Section 27.14 is amended by revising the first sentence of paragraphs (a), (f), (k) and adding paragraph (t) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1 or C2 in the 746–757 MHz and 776–787 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320

MHz band, and Block D in the 2345–2350 MHz band, and with the exception of licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands, or 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 600 MHz band, 698–746 MHz, 747–762 MHz, and 777–792 MHz bands or licensees holding AWS authorizations for the 1915–1920 MHz and 1995–2000 MHz bands or the 2000–2020 MHz and 2180–2200 MHz bands, or the 1695–1710 MHz, or the 1755–1780 MHz and 2155–2180 MHz bands. * * *

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), (r), (s), and (t) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(t) The following provisions apply to any licensee holding an authorization in the 600 MHz band:

(1) A licensee shall provide reliable signal coverage and offer service within six (6) years from the date of the initial license to at least forty (40) percent of the population in each of its license areas (''Interim Buildout Requirement'').

(2) A licensee shall provide reliable signal coverage and offer service within twelve (12) years from the date of the initial license to at least seventy-five (75) percent of the population in each of its license areas (''Final Buildout Requirement'').

(3) If a licensee fails to establish that it meets the Interim Buildout Requirement for a particular licensed area, then the Final Buildout Requirement (in this paragraph (t)) and the license term (as set forth in § 27.13(l)) for each license area in which it fails to meet the Interim Buildout Requirement shall be accelerated by two (2) years (from twelve (12) to ten (10) years).

(4) If a licensee fails to establish that it meets the Final Buildout Requirement for a particular license area, its authorization for each license area in which it fails to meet the Final Buildout Requirement shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(5) To demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. For the Gulf of Mexico license area, the licensee shall demonstrate compliance with these performance requirements, using off-shore platforms, including production, manifold, compression, pumping and valving platforms as a proxy for population in the Gulf of Mexico.

(6) An applicant for renewal of a license covered by this paragraph (t) must make a renewal showing, independent of its performance requirements, as a condition of each renewal. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(i) The level and quality of service provided by the applicant (including the population served, the area served, the number of subscribers, the services offered);

(ii) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(iii) The extent to which service is provided to rural areas;

(iv) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(f)(3)(i) of this chapter; and

(v) Any other factors associated with the level of service to the public.

■ 27. Section 27.15 is amended by revising the first sentence in paragraph (d)(1)(i); revising paragraph (d)(1)(iii); revising the first sentence in paragraph (d)(2)(i); and revising paragraph (d)(2)(iii) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) * * *

(1) * * *

(i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands; and for licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands; or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. * * *

* * * * *

(iii) For licensees holding authorizations for the 600 MHz band, AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, or the 2000–2020 MHz and 2180–2200 MHz bands, or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a partitioner or partitionee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q) for 2000–2020 MHz and 2180–2200 MHz licenses, those enumerated in § 27.14(r) for 1915–1920 MHz and 1995–2000 MHz licenses, and those enumerated in § 27.14(s) for 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz licenses, and those enumerated in § 27.14(t) for 600 MHz band licenses.

(2) * * *

(i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands; and for licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–

2200 MHz bands or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. * * *

* * * * *

(iii) For licensees holding authorizations for the 600 MHz band, AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, or the 2000–2020 MHz and 2180–2200 MHz bands, or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a disaggregator or a disaggregatee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q) for 2000–2020 MHz and 2180–2200 MHz licenses, those enumerated in § 27.14(r) for 1915–1920 MHz and 1995–2000 MHz licenses, those enumerated in § 27.14(s) for 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz licenses, and those enumerated in § 27.14(t) for 600 MHz band licenses.

■ 28. Section 27.17 is amended by revising the section heading and paragraphs (a) introductory text, (a)(1), (b), and (c) to read as follows:

§ 27.17 Discontinuance of service in the 600 MHz band and the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands.

(a) *Termination of authorization.* A 600 MHz band authorization and an AWS authorization in the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands will automatically terminate, without specific Commission action, if the licensee permanently discontinues service either during the initial license term or during any subsequent license term, as follows:

(1) After the interim buildout deadline as specified in § 27.14(r), (s), or (t) as applicable (where the licensee meets the Interim Buildout Requirement), or after the accelerated Final Buildout Requirement (where the licensee failed to meet the Interim Buildout Requirement).

* * * * *

(b) For licensees with common carrier or non-common carrier regulatory status that hold 600 MHz band authorizations or AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee in the individual license area. For licensees with private, internal communications regulatory status that hold 600 MHz band authorizations or AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.

(c) *Filing requirements.* A licensee that holds a 600 MHz band authorization or an AWS authorization in the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands, that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

■ 29. Section 27.19 is added to read as follows:

§ 27.19 Requirements for operation of base and fixed stations in the 600 MHz downlink band in close proximity to Radio Astronomy Observatories.

(a) Licensees must make reasonable efforts to protect the radio astronomy observatory at Green Bank, WV, Arecibo, PR, and those identified in § 15.712(h)(3) of this chapter as part of the Very Long Baseline Array (VLBA) from interference.

(b) 600 MHz band base and fixed stations in the 600 MHz downlink band within 25 kilometers of VLBA observatories are subject to coordination with the National Science Foundation (NSF) prior to commencing operations. The appropriate NSF contact point to initiate coordination is Electromagnetic Spectrum Manager, NSF, 4201 Wilson Blvd., Suite 1045, Arlington, VA 22203, fax 703–292–9034, email *esm@nsf.gov.*

(c) Any licensee that intends to operate base and fixed stations in the 600 MHz downlink band in locations near the Radio Astronomy Observatory site located in Green Bank, Pocahontas County, West Virginia, or near the Arecibo Observatory in Puerto Rico, must comply with the provisions in § 1.924 of this chapter.

■ 30. Section 27.50 is amended by revising paragraphs (c) introductory text, (c)(5) introductory text, (c)(9), (c)(10), and the headings to Tables 1 through 4 to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(c) The following power and antenna height requirements apply to stations transmitting in the 600 MHz band and the 698–746 MHz band:

* * * * *

(5) Licensees, except for licensees operating in the 600 MHz downlink band, seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

* * * * *

(9) Control and mobile stations in the 698–746 MHz band are limited to 30 watts ERP.

(10) Portable stations (hand-held devices) in the 600 MHz uplink band and the 698–746 MHz band, and fixed and mobile stations in the 600 MHz uplink band are limited to 3 watts ERP.

* * * * *

Table 1 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 757–758 and 775–776 MHz Bands and for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth of 1 MHz or Less.

* * * * *

Table 2 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth of 1 MHz or Less.

* * * * *

Table 3 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth Greater than 1 MHz.

* * * * *

Table 4 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed

Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth Greater than 1 MHz

* * * * *

■ 31. Section 27.53 is amended by revising paragraph (g) to read as follows:

§ 27.53 Emission limits.

* * * * *

(g) For operations in the 600 MHz band and the 698–746 MHz band, the power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kilohertz or greater. However, in the 100 kilohertz bands immediately outside and adjacent to a licensee's frequency block, a resolution bandwidth of at least 30 kHz may be employed.

* * * * *

■ 32. Section 27.55 is amended by revising paragraph (a)(2) to read as follows:

§ 27.55 Power strength limits.

(a) * * *

(2) 600 MHz, 698–758, and 775–787 MHz bands: 40 dBμV/m.

* * * * *

■ 33. Section 27.57 is amended by revising paragraph (b) to read as follows:

§ 27.57 International coordination.

* * * * *

(b) Wireless operations in the 512–608 MHz, 614–763 MHz, 775–793 MHz, and 805–806 MHz bands are subject to current and future international agreements between the United States and Canada and the United States and Mexico. Unless otherwise modified by international treaty, licenses must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada, where these services are co-primary in the band.

* * * * *

■ 34. Section 27.75 is amended by adding paragraph (a)(2) to read as follows:

§ 27.75 Basic interoperability requirement.

* * * * *

(a) * * *

(2) Mobile and portable stations that operate on any portion of frequencies in the 600 MHz band must be capable of operating on all frequencies in the 600 MHz band using the same air interfaces that the equipment utilizes on any frequencies in the 600 MHz band.

* * * * *

■ 35. Add subpart N to part 27 to read as follows:

Subpart N—600 MHz Band

Sec.

27.1300 600 MHz band subject to competitive bidding.
27.1301 Designated entities in the 600 MHz band.

§ 27.1300 600 MHz band subject to competitive bidding.

As required by section 6403(c) of the Spectrum Act, applications for 600 MHz band initial licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q will apply unless otherwise provided in this subpart.

§ 27.1301 Designated entities in the 600 MHz band.

Eligibility for small business provisions:

(a) *Small business.* (1) A small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $40 million for the preceding three (3) years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $15 million for the preceding three (3) years.

(b) *Bidding credits.* A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

PART 73—RADIO BROADCAST SERVICES

■ 36. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 37. Section 73.3700 is revised to read as follows:

§ 73.3700 Post-Incentive Auction Licensing and Operation.

(a) *Definitions*—(1) *Broadcast television station.* For purposes of this section, broadcast television station means full power television stations and Class A television stations.

(2) *Channel reassignment public notice.* For purposes of this section, *Channel Reassignment Public Notice* means the public notice to be released upon the completion of the broadcast television spectrum incentive auction conducted under section 6403 of the *Spectrum* Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(3) *Channel sharee station.* For purposes of this section, *channel sharee station* means a broadcast television station for which a winning channel sharing bid, as defined in § 1.2200(d) of this chapter, was submitted.

(4) *Channel sharer station.* For purposes of this section, *channel sharer station* means a broadcast television station that shares its television channel with a channel sharee.

(5) *Channel sharing agreement* (*CSA).* For purposes of this section, *channel sharing agreement* or *CSA* means an executed agreement between the licensee of a channel sharee station or stations and the licensee of a channel sharer station governing the use of the shared television channel.

(6) *High-VHF-to-Low-VHF station.* For purposes of this section, *High-VHF-to-Low-VHF station* means a broadcast television station for which a winning high-VHF-to-low-VHF bid, as defined in § 1.2200(f) of this chapter, was submitted.

(7) *License relinquishment station.* For purposes of this section, *license relinquishment station* means a broadcast television station for which a winning license relinquishment bid, as defined in § 1.2200(g) of this chapter, was submitted.

(8) *MVPD.* For purposes of this section, *MVPD* means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming as set forth in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

(9) *Pre-auction channel.* For purposes of this section, *pre-auction channel* means the channel that is licensed to a broadcast television station on the date

that the Channel Reassignment Public Notice is released.

(10) *Predetermined cost estimate.* For purposes of this section, *predetermined cost estimate* means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(11) *Post-auction channel.* For purposes of this section, *post-auction channel* means the channel specified in the Channel Reassignment Public Notice or a channel authorized by the Media Bureau in a construction permit issued after the date that the Channel Reassignment Public Notice is released under the procedures set forth in paragraph (b) of this section.

(12) *Reassigned station.* For purposes of this section, a *reassigned station* means a broadcast television station that is reassigned to a new channel in the Channel Reassignment Public Notice, not including channel sharing stations, UHF-to-VHF stations, or High-VHF-to-Low-VHF stations.

(13) *Reimbursement period.* For purposes of this section, *reimbursement period* means the period ending three years after the completion of the forward auction pursuant to section 6403(b)(4)(D) of the *Spectrum Act.*

(14) Spectrum Act. The term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(15) *Transitioning station.* For purposes of this section, a *transitioning station* means a:

(i) Reassigned station,

(ii) UHF-to-VHF station,

(iii) High-VHF-to-Low-VHF station,

(iv) License relinquishment station, or

(v) A channel sharee or sharer station.

(16) *TV broadcaster relocation fund.* For purposes of this section, the *TV Broadcaster Relocation Fund* means the fund established by section 6403(d)(1) of the *Spectrum Act.*

(17) *UHF-to-VHF station.* For purposes of this section, *UHF-to-VHF station* means a television station for which a winning UHF-to-VHF bid, as defined in § 1.2200(l) of this chapter, was submitted.

(b) *Post-auction licensing*—(1) *Construction permit applications.* (i) Licensees of reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations must file a minor change application for a construction permit for the channel specified in the Channel Reassignment Public Notice using FCC Form 301, 301–CA, or 340 within three months of the release date of the Channel Reassignment Public Notice. Licensees that are unable to meet this filing deadline may request a waiver of the deadline no later than 30 days prior to the deadline.

(ii) A licensee of a reassigned station that is reassigned from one channel to a different channel within its existing band will be permitted to propose transmission facilities in its construction permit application that will extend its coverage contour, as defined by the technical parameters specified in the Channel Reassignment Public Notice, if such facilities:

(A) Are necessary to achieve the coverage contour specified in the Channel Reassignment Public Notice or to address loss of coverage area resulting from the new channel assignment;

(B) Will not extend a full power television station's noise limited contour or a Class A television station's protected contour by more than one percent in any direction; and

(C) Will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other broadcast television station.

(iii) The licensee of a UHF-to-VHF station or High-VHF-to-Low-VHF station will be permitted to propose transmission facilities in its construction permit application that will extend its coverage contour, as defined by the technical parameters specified in the Channel Reassignment Public Notice, if the proposed facility will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other broadcast television station.

(iv) The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station that, for reasons beyond its control, is unable to construct facilities that meet the technical parameters specified in the Channel Reassignment Public Notice, or the permissible contour coverage variance from those technical parameters specified in paragraph (b)(1)(ii) or (iii) of this section, may request a waiver of the construction permit application deadline specified in paragraph (b)(1)(i) of this section no later than 30 days prior to the deadline. If its waiver request is granted, the licensee will be afforded an opportunity to submit an application for a construction permit pursuant to paragraph (b)(2)(i) or (ii) of this section in a priority filing window to be announced by the Media Bureau by public notice.

(v) Construction permit applications filed pursuant to paragraph (b)(1)(i) of this section will be afforded expedited processing if the application:

(A) Does not seek to expand the coverage area, as defined by the technical parameters specified in the Channel Reassignment Public Notice, in any direction;

(B) Seeks authorization for facilities that are no more than five percent smaller than those specified in the Channel Reassignment Public Notice with respect to predicted population served; and

(C) Is filed within the three-month deadline specified in paragraph (b)(1)(i) of this section.

(vi) *Delegation of authority.* The Commission delegates authority to the Chief, Media Bureau to establish construction periods for reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations.

(2) *Applications for alternate channels and expanded facilities*—(i) *Alternate channels.* The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station will be permitted to file a major change application for a construction permit for an alternate channel on FCC Form 301, 301–CA, or 340 during a filing window to be announced by the Media Bureau by public notice, provided that:

(A) The licensee of a UHF-to-VHF station cannot request an alternate UHF channel;

(B) The licensee of a UHF-to-VHF station that specified the high-VHF band or the low-VHF band in its UHF-to-VHF bid cannot request a VHF channel outside of the assigned band; and

(C) The licensee of a High-VHF-to-Low-VHF station cannot request an alternate high-VHF channel.

(ii) *Expanded facilities.* The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station will be permitted to file a minor change application for a construction permit on FCC Form 301, 301–CA, or 340 during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under §§ 73.3572(a)(1) and (2) or 74.787(b) of this chapter.

(iii) *Delegation of authority.* The Commission delegates authority to the Chief, Media Bureau to:

(A) Announce filing opportunities for alternate channels and expanded facilities applications and specifying appropriate processing guidelines, including the standards to qualify for priority filing, cut-off protections, and means to avoid or resolve mutual exclusivity between applications; and

(B) Establish construction periods for permits authorizing alternate channels or expanded facilities.

(3) *License applications for channel sharing stations.* The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 302–DTV or 302–CA within three months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the *Spectrum Act.*

(4) *Deadlines to terminate operations on pre-auction channels.* (i) The licensee of a license relinquishment station must comply with the notification and cancellation procedures in § 73.1750 and terminate operations on its pre-auction channel within three months of the date that the licensee receives its incentive payment pursuant to section 6403(a)(1) of the *Spectrum Act.*

(ii) The licensee of a channel sharee station must comply with the notification and cancellation procedures in § 73.1750 and terminate operations on its pre-auction channel within three months of the date that the licensee receives its incentive payment pursuant to section 6403(a)(1) of the *Spectrum Act.*

(iii) All reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations must cease operating on their pre-auction channel once such station begins operating on its post-auction channel or by the deadline specified in its construction permit for its post-auction channel, whichever occurs earlier, and in no event later than the end of the post-auction transition period as defined in § 27.4 of this chapter.

(5) *Applications for additional time to complete construction*—(i) *Delegation of authority.* Authority is delegated to the Chief, Media Bureau to grant a single extension of time of up to six months to licensees of reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations to complete construction of their post-auction channel upon demonstration by the licensee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control. Licensees needing additional time beyond such a single extension of time to complete construction shall be subject to the tolling provisions in § 73.3598.

(ii) Circumstances that may justify an extension of the construction deadline of a licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station include but are not limited to:

(A) Weather-related delays, including a tower location in a weather-sensitive area;

(B) Delays in construction due to the unavailability of equipment or a tower crew;

(C) Tower lease disputes;

(D) Unusual technical challenges, such as the need to construct a top-mounted or side-mounted antenna or the need to coordinate channel changes with another station; and

(E) Delays faced by licensees that must obtain government approvals, such as land use or zoning approvals, or that are subject to competitive bidding requirements prior to purchasing equipment or services.

(iii) A licensee of a reassigned station, UHF-to-VHF station, or High-VHF-to-Low-VHF station may rely on ''financial hardship'' as a criterion for seeking an extension of time if it is subject to an active bankruptcy or receivership proceeding, provided that the licensee makes an adequate showing that it has filed requests to proceed with construction in the relevant court proceedings. Any other licensee that seeks an extension of time based on financial hardship must demonstrate that, although it is not subject to an active bankruptcy or receivership proceeding, rare and exceptional financial circumstances warrant granting additional time to complete construction.

(iv) Applications for additional time to complete construction must be filed electronically in CDBS using FCC Form 337 no less than 90 days before the expiration of the construction permit.

(c) *Consumer education for transitioning stations.* (1) Transitioning stations that operate on a commercial basis will be required to air at least one Public Service Announcement (PSA) and run at least one crawl in every quarter of every day for 30 days prior to the date that the station terminates operations on its pre-auction channel. One of the required PSAs and one of the required crawls must be run during prime time hours (for purposes of this section, between 8:00 p.m. and 11:00 p.m. in the Eastern and Pacific time zones, and between 7:00 p.m. and 10:00 p.m. in the Mountain and Central time zones) each day.

(2) Transitioning stations that operate on a noncommercial educational (NCE) basis have the option to either:

(i) Comply with the requirements of paragraph (c)(1) of this section; or

(ii) Air 60 seconds per day of on-air consumer education PSAs, in variable timeslots, for 30 days prior to the station's termination of operations on its pre-auction channel.

(3) *Transition crawls.* (i) Each crawl must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area and be provided in the same language as a majority of the programming carried by the transitioning station.

(ii) Each crawl must include the date that the station will terminate operations on its pre-auction channel; inform viewers of the need to rescan if the station has received a new post-auction channel assignment; and explain how viewers may obtain more information by telephone or online.

(4) *Transition PSAs.* (i) Each PSA must have a duration of at least 15 seconds.

(ii) Each PSA must be provided in the same language as a majority of the programming carried by the transitioning station; include the date that the station will terminate operations on its pre-auction channel; inform viewers of the need to rescan if the station has received a new post-auction channel assignment; explain how viewers may obtain more information by telephone or online; and for stations with new post-auction channel assignments, provide instructions to both over-the-air and MVPD viewers regarding how to continue watching the television station; and be closed-captioned.

(5) Licensees of transitioning stations, except for license relinquishment stations, must place a certification of compliance with the requirements in paragraph (c) of this section in their online public file within 30 days after beginning operations on their post-auction channels. Licensees of license relinquishment stations must include the certification in their notification of discontinuation of service pursuant to § 73.1750.

(d) *Notice to MVPDs.* (1) Licensees of transitioning stations must provide notice to MVPDs that:

(i) No longer will be required to carry the station because it will cease operations or because of the relocation of a channel sharee station;

(ii) Currently carry and will continue to be obligated to carry a station that will have a new post-auction channel assignment; or

(iii) Will become obligated to carry a station due to the relocation of a channel sharee station.

(2) The notice to MVPDs must be provided in the form of a letter notification and must contain the following information:

(i) Date and time of any channel changes;

(ii) Pre-auction and post-auction channels;

(iii) Modification (if any) to antenna position, location or power levels;

(iv) Stream identification information for channel sharing stations; and

(v) Engineering staff contact information.

(3) Should any of the information in (d)(2) of this section change during the time that the station is transitioning from its pre-auction to its post-auction channel, an amended notification must be sent.

(4) For cable systems, the notification letter must be addressed to the system's official address of record provided in the cable system's most recent filing in the Commission's Cable Operations and Licensing System (COALS) Form 322. For all other MVPDs, the notification letter must be addressed to the official corporate address registered with their State of incorporation.

(5) Notification letters must be sent within the following time frames:

(i) For license relinquishment stations, not less than 30 days prior to terminating operations;

(ii) For channel sharee stations, not less than 30 days prior to terminating operations of the pre-auction channel;

(iii) For channel sharee and channel sharer stations, not less than 30 days prior to initiation of operations on the shared channel; and

(iv) For reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations, not less than 90 days prior to the date on which they will begin operations on their post-auction channel.

(v) If a station's anticipated transition date changes due to an unforeseen delay or change in transition plan, the licensee must send a further notice to affected MVPDs informing them of the new anticipated transition date.

(e) *Reimbursement rules*—(1) *Entities eligible for reimbursement.* The Commission will reimburse relocation costs reasonably incurred only by:

(i) The licensees of full power and Class A broadcast television stations that are reassigned under section 6403(b)(1)(B)(i) of the *Spectrum Act,* including channel sharer stations that are reassigned to a new channel in the Channel Reassignment Public Notice; and

(ii) MVPDs in order to continue to carry the signal of a full power or Class A broadcast television station that is:

(A) Described in paragraph (e)(1)(i) of this section;

(B) A UHF-to-VHF station;

(C) A High-VHF-to-Low-VHF station; or

(D) A channel sharee station.

(2) *Estimated costs.* (i) No later than three months following the release of the Channel Reassignment Public Notice, all broadcast television station licensees and MVPDs that are eligible to receive payment of relocation costs will be required to file an estimated cost form providing an estimate of their reasonably incurred relocation costs.

(ii) Each broadcast television station licensee and MVPD that submits an estimated cost form will be required to certify, *inter alia,* that:

(A) It believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form;

(B) It will use all money received from the TV Broadcaster Relocation Fund only for expenses it believes in good faith are eligible for reimbursement;

(C) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the TV Broadcaster Relocation Fund;

(D) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred; and

(E) It will file all required documentation of its relocation expenses as instructed by the Media Bureau.

(iii) If a broadcast television station licensee or MVPD seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment in order to change channels or to continue to carry the signal of a broadcast television station that changes channels.

(iv) Entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(3) *Final Allocation Deadline.* (i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the ''Final Allocation Deadline'').

(ii) If a broadcast television station licensee or MVPD has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(4) *Final accounting.* After completing all construction or reimbursable changes, broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(5) *Progress reports.* Broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund are required to submit progress reports at a date and frequency to be determined by the Media Bureau.

(6) *Documentation requirements.* (i) Each broadcast television station licensee and MVPD that receives payment from the TV Broadcaster Relocation Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund.

(ii) Each broadcast television station licensee and MVPD that receives payment from the TV Broadcaster Relocation Fund must make available all relevant documentation upon request from the Commission or its contractor.

(7) *Delegation of authority.* The Commission delegates authority to the Chief, Media Bureau, to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the TV Broadcaster Relocation Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy, to establish a catalog of expenses eligible for reimbursement and predetermined cost estimates, review the estimated cost forms, issue initial allocations for costs reasonably incurred pursuant to section 6403(b)(4) of the Spectrum Act, set filing deadlines and review information and documentation regarding progress reports, final allocations, and final accountings, and issue final allocations to reimburse for costs reasonably incurred pursuant to section 6403(b)(4) of the Spectrum Act.

(f) *Service rule waiver*—(1) *Waiver requests.* (i) A broadcast television station licensee described in paragraph (e)(1)(i) of this section may file a request with the Chief, Media Bureau for a waiver of the Commission's service rules pursuant to section 6403(b)(4)(B) of the *Spectrum Act* during a 30-day window commencing upon the date that the Channel Reassignment Public Notice is released.

(ii) A broadcast television station licensee may request that a waiver be granted on a temporary or permanent basis.

(2) A licensee will have 10 days following a grant of the waiver to notify the Commission whether it accepts the terms of the waiver.

(3) A licensee is required to meet all requirements for receiving payment of relocation costs under section 6403(b)(4) of the Spectrum Act established by the Commission, including the requirements of paragraph (e) of this section, until its waiver request is granted and the licensee accepts the terms of the waiver.

(4) A licensee that is granted and accepts the terms of the waiver or a licensee with a pending waiver application must comply with all filing and notification requirements, construction schedules, and other post-auction transition deadlines set forth in paragraphs (b), (c), and (d) of this section.

(g) *Low Power TV and TV translator stations.* (1) Licensees of operating low power TV and TV translator stations that are displaced by a broadcast television station or a wireless service provider or whose channel is reserved as a guard band as a result of the broadcast television spectrum incentive auction conducted under section 6403 of the *Spectrum Act* shall be permitted to submit an application for displacement relief in a restricted filing window to be announced by the Media Bureau by public notice. Except as otherwise indicated in this section, such applications will be subject to the rules governing displacement applications set forth in §§ 73.3572(a)(4) and 74.787(a)(4) of this chapter.

(2) In addition to other interference protection requirements set forth in the rules, when requesting a new channel in a displacement application, licensees of operating low power TV and TV translator stations will be required to demonstrate that the station would not cause interference to the predicted service of broadcast television stations on:

(i) Pre-auction channels;

(ii) Channels assigned in the Channel Reassignment Public Notice; or

(iii) Alternative channels or expanded facilities broadcast television station licensees have applied for pursuant to paragraph (b)(2) of this section.

(3) *Mutually exclusive displacement applications.* Licensees of low power TV and TV translator stations that file mutually exclusive displacement applications will be permitted to resolve the mutual exclusivity through an engineering solution or settlement agreement. If no resolution of mutually exclusive displacement applications occurs, a selection priority will be granted to the licensee of a displaced digital replacement translator.

(4) *Notification and termination provisions for displaced low power TV and TV translator stations.* (i) A wireless licensee assigned to frequencies in the 600 MHz band under part 27 of this chapter must notify low power TV and TV translator stations of its intent to commence wireless operations and the likelihood of receiving harmful interference from the low power TV or TV translator station to such operations within the wireless licensee's licensed geographic service area.

(ii) The new wireless licensees must:

(A) Notify the low power TV or TV translator station in the form of a letter, via certified mail, return receipt requested;

(B) Indicate the date the new wireless licensee intends to commence operations in areas where there is a likelihood of receiving harmful interference from the low power TV or TV translator station; and

(C) Send such notification not less than 120 days in advance of the commencement date.

(iii) Low power TV and TV translator stations may continue operating on frequencies in the 600 MHz band assigned to wireless licensees under part 27 of this chapter until the wireless licensee commences operations as indicated in the notification sent pursuant to this paragraph.

(iv) After receiving notification, the low power TV or TV translator licensee must cease operating or reduce power in order to eliminate the potential for harmful interference before the commencement date set forth in the notification.

(v) Low power TV and TV translator stations that are operating on the UHF spectrum that is reserved for guard band channels as a result of the broadcast television incentive auction conducted under section 6403 of the *Spectrum Act* may continue operating on such channels until the end of the post-auction transition period as defined in § 27.4 of this chapter, unless they receive notification from a new wireless licensee pursuant to the requirements of paragraph (g)(4) of this section that they are likely to cause harmful interference in areas where the wireless licensee intends to commence operations, in which case the requirements of paragraph (g)(4) of this section will apply.

(h) *Channel sharing operating rules.* (1) Each broadcast television station licensee that is a party to a CSA shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all of the Commission's obligations, rules, and policies applicable to the television service.

(2) *Channel sharing between full power television and Class A television stations.* (i) A CSA may be executed between licensees of full power television stations, between licensees of Class A television stations, and between licensees of full power and Class A television stations.

(ii) A Class A channel sharee station licensee that is a party to a CSA with a full power channel sharer station licensee must comply with the rules of part 73 governing power levels and interference, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 et seq.

(iii) A full power channel sharee station licensee that is a party to a CSA with a Class A channel sharer station licensee must comply with the rules of part 74 of this chapter governing power levels and interference.

(iv) A Class A channel sharee station may qualify only for the cable carriage rights afforded to ''qualified low power television stations'' in § 76.56(b)(3) of this chapter.

(3) *Channel sharing between commercial and noncommercial educational television stations.* (i) A CSA may be executed between commercial and NCE broadcast television station licensees.

(ii) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, will retain its NCE status and must continue to comply with § 73.621.

(iii) If the licensee of an NCE station operating on a reserved channel under § 73.621 becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, the portion of the shared television channel on which the NCE station operates shall be reserved for NCE-only use.

(iv) The licensee of an NCE station operating on a reserved channel under

§ 73.621 that becomes a party to a CSA may assign or transfer its shared license only to an entity qualified under § 73.621 as an NCE television licensee.

(v) If the licensee of an NCE station operating on a reserved channel under § 73.621 becomes a party to a CSA and its license is relinquished or terminated, only another entity meeting the eligibility criteria of § 73.621 will be considered for reassignment of the shared license.

(4) *Required CSA provisions.* (i) CSAs must contain provisions outlining each licensee's rights and responsibilities regarding:

(A) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(B) Allocation of bandwidth within the shared channel;

(C) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(D) Termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA.

(ii) CSAs must include provisions:

(A) Affirming compliance with the channel sharing requirements in paragraph (h)(4) of this section, the Incentive Auction Report and Order, Docket No. 12–268 (FCC 14–50), and the Channel Sharing Report and Order, 27 FCC Rcd 4616 (2012); and

(B) Requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(5) If a channel sharee or channel sharer station's license is terminated, the licensees of the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel. The rights to the terminated portion of the shared channel will revert to the Commission for reassignment. The final award of the rights to the terminated portion of the shared channel will be conditioned on a new channel sharing licensee agreeing to the terms of the existing CSA. If the new channel sharing licensee and the licensees of the remaining channel sharing station or stations agree to renegotiate the terms of the existing CSA, the agreement may be amended, subject to Commission approval. If the negotiations to amend the agreement are unsuccessful, the remaining station or stations will be permitted to continue to operate while the channel remains a shared allocation and subject to reassignment.

(6) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

(7) *Preservation of carriage rights.* A channel sharee station that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at the shared location if it were not sharing a channel.

■ 38. Section 73.6012 is revised to read as follows:

§ 73.6012 Protection of Class A TV, low power TV and TV translator stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.707 of this chapter. The protection of other authorized low power TV and TV translator stations and applications for changes in such stations shall not apply in connection with any application filed by a Class A TV station pursuant to § 73.3700(b)(1).

■ 39. Section 73.6019 is revised to read as follows:

§ 73.6019 Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized low power TV, TV translator, digital low power TV and digital TV translator stations in accordance with the requirements of § 74.793(b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the digital Class A station is filed. The protection of other authorized low power TV, TV translator, digital low power TV and digital TV translator stations shall not apply in connection with any application filed by a Class A TV station pursuant to § 73.3700(b)(1).

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 40. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 41. Section 74.602 is amended by adding paragraph (h)(5) and (6) to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(h) * * *

(5) (i) The licensee of a TV STL, TV relay station, or TV translator relay station that operates on frequencies in the 600 MHz band assigned to wireless licensees under part 27 of this chapter must cease operations on those frequencies no later than the end of the post-auction transition period as defined in § 27.4 of this chapter. The licensee of a TV STL, TV relay station, or TV translator relay station may be required to cease operations on a date earlier than the end of the post-auction transition period if it receives a notification pursuant to paragraph (h)(5)(ii) of this section.

(ii) A wireless licensee assigned to frequencies in the 600 MHz band under part 27 of this chapter must notify the licensee of a TV STL, TV relay station, or TV translator relay station of its intent to commence wireless operations and the likelihood of harmful interference from the TV STL, TV relay station, or TV translator relay station to those operations within the wireless licensee's licensed geographic service area.

(A) The wireless licensee must:

(*1*) Notify the licensee of the TV STL, TV relay station, or TV translator relay station in the form of a letter, via certified mail, return receipt requested; and

(*2*) Send such notification not less than 30 days in advance of the approximate date of commencement of such operations.

(B) The licensee of the TV STL, TV relay station, or TV translator relay station must cease the subject operation within 30 days of receiving the notification pursuant to this section.

(iii) By the end of the post-auction transition period, all TV STL, TV relay station and TV translator relay station licensees must modify or cancel their authorizations and vacate the 600 MHz band. Applications for TV STL, TV relay and TV translator relay stations in the 600 MHz band will not be accepted for filing on or after the end date for the post-auction transition period.

(6) The licensee of a TV STL, TV relay station, or TV translator relay station that operates on the UHF spectrum that is reserved for guard band channels as a result of the broadcast television incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) must cease operations on those frequencies no later than the end of the post-auction transition period as defined in § 27.4 of this chapter. The licensee of a TV STL, TV relay station, or TV translator relay station may be required to cease operations on a date earlier than the end of the post-auction transition period if it receives a notification pursuant to paragraph (h)(5)(ii) of this section.

■ 42. Section 74.802 is amended by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 74.802 Frequency assignment.

* * * * *

(b)(1) Operations in the bands allocated for TV broadcasting are limited to locations at least 4 kilometers outside the protected contours of co-channel TV stations shown in the following table. These contours are calculated using the methodology in § 73.684 of this chapter and the R–6602 curves contained in § 73.699 of this chapter.

Type of station	Protected contour		
	Channel	Contour (dBu)	Propagation curve
Analog: Class A TV, LPTV, translator and booster	Low VHF (2–6)	47	F(50,50)
	High VHF (7–13)	56	F(50,50)
	UHF (14–51)	64	F(50,50)
Digital: Full service TV, Class A TV, LPTV, translator and booster.	Low VHF (2–6)	28	F(50,90)
	High VHF (7–13)	36	F(50,90)
	UHF (14–51)	41	F(50,90)

(2) Low power auxiliary stations may operate closer to co-channel TV broadcast stations than the distances specified in paragraph (b)(1) of this section provided that their operations are coordinated with TV broadcast stations that could be affected by the low power auxiliary station operation. Coordination must be completed prior to operation of the low power auxiliary station.

* * * * *

(f) *Operations in 600 MHz band assigned to wireless licensees under part 27 of this chapter.* A low power auxiliary station that operates on frequencies in the 600 MHz band assigned to wireless licensees under part 27 of this chapter must cease operations on those frequencies no later than the end of the post-auction transition period as defined in § 27.4 of this chapter. During the post-auction transition period, low power auxiliary stations will operate on a secondary basis to licensees of part 27 of this chapter, *i.e.,* they must not cause to and must accept harmful interference from these licensees.

■ 43. Section 74.870 is amended by revising paragraph (i) to read as follows:

§ 74.870 Wireless video assist devices.

* * * * *

(i) *Operations in 600 MHz band assigned to wireless licensees under part 27 of this chapter.* A wireless video assist device that operates on frequencies in the 600 MHz band assigned to wireless licensees under part 27of this chapter must cease operations on those frequencies no later than the end of the post-auction transition period as defined in § 27.4 of this chapter. During the post-auction transition period, wireless video assist devices will operate on a secondary basis to licensees of part 27 of this chapter, *i.e.,* they must not cause to and must accept harmful interference from these licensees.

[FR Doc. 2014–18423 Filed 8–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 79 Friday,

No. 158 August 15, 2014

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-Billed Cuckoo; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0011; 4500030114]

RIN 1018–AZ44

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-Billed Cuckoo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the western distinct population segment of the yellow-billed cuckoo (western yellow-billed cuckoo) (*Coccyzus americanus*) under the Endangered Species Act. In total, approximately 546,335 acres (221,094 hectares) are being proposed for designation as critical habitat in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Texas, Utah, and Wyoming. The effect of this regulation, if finalized, is to designate critical habitat for the western yellow-billed cuckoo under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before October 14, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by September 29, 2014.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R8–ES–2013–0011, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0011; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. 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 Information Requested section below for more information).

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0011, and at the Sacramento Fish and Wildlife Office at *http://www.fws.gov/sacramento* (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and field office set out above, and may also be included in the preamble of this rule or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jen Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825; by telephone 916–414–6600; or by facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. On October 3, 2013, we proposed listing the western yellow-billed cuckoo as a threatened species (78 FR 61621).

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The critical habitat areas we are proposing to designate in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the western yellow-billed cuckoo.

This is a proposed rule to designate critical habitat for the western yellow-billed cuckoo. This proposed designation of critical habitat identifies areas based on the best scientific and commercial information available that we have determined are essential to the conservation of the species. The proposed critical habitat is located in the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Texas, Utah, and Wyoming.

We have prepared a draft economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. The supporting information we used in determining the economic impacts of the proposed critical habitat is summarized in this proposed rule (see Consideration of Economic Impacts) and is available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0011 and at the Sacramento Fish and Wildlife Office at *http://www.fws.gov/sacramento* (see **FOR FURTHER INFORMATION CONTACT**).

We are seeking peer review and public comment. We are seeking comments and soliciting information from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The western yellow-billed cuckoo's biology and range; habitat requirements for feeding, breeding, and sheltering; and the locations of any additional populations.

(2) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including whether there are threats to the western yellow-billed cuckoo from human activity that can be expected to increase due to the designation, and whether that increase in threat

outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(3) Specific information on:

(a) The amount and distribution of western yellow-billed cuckoo habitat;

(b) What areas occupied at the time of listing (i.e., are currently occupied), that contain features essential to the conservation of the western yellow-billed cuckoo, should be included in the critical habitat designation and why;

(c) Special management considerations or protection that may be needed in areas we are proposing as critical habitat, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the western yellow-billed cuckoo and why.

(4) For Unit 52 (*NM–8 Middle Rio Grande 1; New Mexico*), we have determined that it is appropriate to propose critical habitat into the conservation pool area of Elephant Butte Reservoir down to approximately river-mile (RM) 54. This is based on the number of yellow-billed cuckoo breeding pairs identified in the area, the amount of habitat available, and the relationship and importance of the Elephant Butte Reservoir and Rio Grande River to other yellow-billed cuckoo habitat in New Mexico and the southwest. Additional habitat and western yellow-billed cuckoo breeding occurrences are located downstream to approximately RM 42. We seek information on whether the area or portions of the area to RM 42 at Elephant Butte Reservoir in New Mexico is essential to the conservation of the species and whether we should include the area as critical habitat for the species and why.

(5) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and for those specific areas whether the benefits of potentially excluding them outweigh the benefits of including them, pursuant to section 4(b)(2) of the Act. For specific lands that we should consider for exclusion under section 4(b)(2) of the Act, please provide us management plans, conservation easements, agreements, habitat conservation plans (HCP), or other appropriate information, that describe the commitment and assurances of protection of the physical or biological features of western yellow-billed cuckoo critical habitat; property boundaries; western yellow-billed cuckoo status, distribution, and abundance; and management actions to protect the physical or biological features of the western yellow-billed cuckoo.

(6) Land use designations and current or planned activities in the subject areas, and their possible impacts on the proposed critical habitat.

(7) Information on the projected and reasonably likely impacts of climate change on the western yellow-billed cuckoo and proposed critical habitat.

(8) Any probable economic, national security, or other relevant impacts of designating as critical habitat any particular area that may be included in the final designation and the benefits of including or excluding areas where these impacts occur.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, 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, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list the western yellow-billed cuckoo as a threatened species under the Act published previously in the **Federal Register** on October 3, 2013 (78 FR 61621). Please see that document for actions leading to this proposed designation of critical habitat.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the western yellow-billed cuckoo. For a thorough assessment of the species' biology and natural history, including limiting factors and species resource needs, please refer to the proposal to list this species as threatened published previously in the **Federal Register** on October 3, 2013 (78 FR 61621) (available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0104).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the U.S. Fish and Wildlife Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow

the government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. In the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing and which is outside the geographical area (range) considered occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species at the time of listing only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504).

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species, and which require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for the western yellow-billed cuckoo from studies of this species' habitat, ecology, and life history, as described below. Additional information can be found in the proposed listing rule published in the **Federal Register** on October 3, 2013 (78 FR 61621). The physical or biological features identified here focus primarily on breeding habitat and secondarily on foraging habitat because most of the habitat relationship research data derive from studies of these activities. Much less is known about migration stopover or dispersal habitat within the breeding range, but based on the best scientific evidence we conclude that these additional activities require the same types of habitat as breeding and foraging and that conservation of sufficient habitat for breeding and foraging will also provide sufficient habitat for the other activities. We have determined that the following physical or biological features are essential to the western yellow-billed cuckoo.

Space for Individual and Population Growth and for Normal Behavior

The western yellow-billed cuckoo breeds in riparian habitat along low-gradient (surface slope less than 3 percent) rivers and streams, and in open riverine valleys that provide wide floodplain conditions (greater than 325 ft (100 m)). Within the boundaries of the distinct population segment (DPS) (see Figure 2 at 78 FR 61631, in the proposed listing rule (78 FR 61621; October 3, 2013)) these riparian areas are located from southern British Columbia, Canada, to southern Sinaloa, Mexico, and may occur from sea level to 7,000 feet (ft) (2,154 meters (m)) (or slightly higher in western Colorado, Utah, and Wyoming) in elevation. Because critical habitat only applies to areas within the United States, we did not examine areas in Canada and Mexico. The moist conditions that support riparian plant communities that provide western yellow-billed cuckoo habitat typically exist in lower elevation, broad floodplains, as well as where rivers and streams enter impoundments. The species does not use narrow, steep-walled canyons. In the extreme southern portion of their range in the States of Sonora (southern quarter) and Sinaloa, Mexico, western yellow-billed cuckoos also nest in upland thorn scrub and dry deciduous habitats away from the riparian zone (Russell and Monson 1988, p. 131), though their densities are lower in these habitats than they are in adjacent riparian areas.

At the landscape level, the available information suggests the western yellow-billed cuckoo requires large tracts of willow-cottonwood or mesquite (*Prosopis* sp.) forest or woodland for their nesting season habitat. Western yellow-billed cuckoos rarely nest at sites less than 50 acres (ac) (20 hectares (ha)) in size, and sites less than 37 ac (15 ha) are considered unsuitable habitat (Laymon and Halterman 1989, p. 275). Habitat patches from 50 to 100 ac (20 to 40 ha) in size are considered marginal habitat (Laymon and Halterman 1989, p. 275). Habitat between 100 ac (40 ha) and 200 ac (81 ha), although considered suitable are not consistently used by the species. The optimal size of habitat patches for the species are generally greater than 200 ac (81 ha) in extent and have dense canopy closure and high foliage volume of willows (*Salix* sp.) and cottonwoods (*Populus* sp.) (Laymon and Halterman 1989, pp. 274–275) and thus provide adequate space for foraging and nesting. Tamarisk (*Tamarix* sp.), a nonnative tree species, may be a component of the habitat, especially in Arizona and New Mexico. As the proportion of tamarisk increases, the suitability of the habitat for the western yellow-billed cuckoo decreases. Sites with a monoculture of tamarisk are unsuitable habitat for the species. Sites with strips of habitat less than 325 ft (100 m) in width are rarely occupied, which indicates that edge effects in addition to overall patch size influence western yellow-billed cuckoo habitat selection for nesting. The association of breeding with large tracts of suitable riparian habitat is likely related to home range size. Individual home ranges during the breeding season average over 100 ac (40 ha), and home ranges up to 500 ac (202 ha) have been recorded (Laymon and Halterman 1987, pp. 31–32; Halterman 2009, p. 93; Sechrist *et al.* 2009, p. vii; McNeil *et al.* 2010, p. 75; McNeil *et al.* 2011, p. 37; McNeil *et al.* 2012, p. 69).

Western yellow-billed cuckoos may nest at more than one location in a year. Some individuals may nest first in the northern area, such as Arizona or New Mexico, and then nest a second time at more southern locations in southern Sonora, Mexico (Rohwer *et al.* 2009, pp. 19050–19055). However, data are lacking to confirm that the same individuals are breeding in both locations within the same season. Some individuals also roam widely (several hundred miles), apparently assessing food resources prior to selecting a nest site (Sechrist *et al.* 2012, pp. 2–11).

During movements between nesting attempts western yellow-billed cuckoos are found at riparian sites with small groves or strips of trees, sometimes less than 10 ac (4 ha) in extent (Laymon and Halterman 1989, p. 274). These stopover and foraging sites can be similar to breeding sites, but are smaller is size, are narrower in width, and lack understory vegetation when compared to nesting sites.

Therefore, based on the information above, we identify rivers and streams of lower gradient and more open valleys with a broad floodplain to be an essential physical or biological feature for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food

Western yellow-billed cuckoos are insect specialists but also prey on small vertebrates such as tree frogs and lizards. They depend on an abundance of large, nutritious insect prey (for example, sphinx moth larvae (Family Sphingidae) and katydids (Family Tettigoniidae)) and, in some cases, a high population density of tree frogs (e.g., *Hyla* sp. and *Pseudacris* sp.). In the arid West, these conditions are usually found in cottonwood-willow riparian associations along water courses. The arrival of birds and the timing of nesting are geared to take advantage of any short-term abundance of prey. In years of high insect abundance, western yellow-billed cuckoos lay larger clutches (three to five eggs rather than two), a larger percentage of eggs produce fledged young, and they breed multiple times (two to three nesting attempts rather than one) (Laymon *et al.* 1997, pp. 5–7). Diet studies of western yellow-billed cuckoos on the South Fork Kern River in California showed the majority of the prey to be large green caterpillars (primarily big poplar sphinx moth larvae (*Pachysphinx occidentalis*)) (45 percent), tree frogs (24 percent), katydids (22 percent), and grasshoppers (Suborder Caelifera) (9 percent) (Laymon *et al.* 1997, p. 7). Minor prey at that and other sites include beetles (*Coleoptera* sp.), dragonflies (*Odonata* sp.), praying mantis (*Mantidae* sp.), flies (*Diptera* sp.), spiders (*Araneae* sp.), butterflies (*Lepidoptera* sp.), caddis flies (*Trichoptera* sp.), crickets (*Gryllidae* sp.), and cicadas (Family Cicadidae) (Laymon *et al.* 1997, p. 7; Hughes 1999, pp. 7–8). In Arizona, cicadas are an important food source (Halterman 2009, p. 112). Small vertebrates such as lizards (*Lacertilia* sp.) are also eaten (Hughes 1999, p. 8).

Western yellow-billed cuckoo food availability is largely influenced by the health, density, and species of vegetation. For example, the big poplar sphinx moth larvae are found only in

willows and cottonwoods and appear to reach their highest density in Fremont cottonwoods (Oehlke 2012, p. 4). Desiccated riparian sites produce fewer suitable insects than healthy moist sites. Western yellow-billed cuckoos generally forage within the tree canopy, and the higher the foliage volume the more likely yellow-billed cuckoos are to use a site for foraging (Laymon and Halterman 1985, pp. 10–12). They generally employ a ''sit and wait'' foraging strategy, watching the foliage for movement of potential prey (Hughes 1999, p. 7).

Therefore, based on the information above, we identify the presence of abundant, large insect fauna (for example, cicadas, caterpillars, katydids, grasshoppers, large beetles, and dragonflies) and tree frogs during nesting season to be an essential physical or biological feature for this species.

Water and Humidity

Habitat for western yellow-billed cuckoo is largely associated with perennial rivers and streams that support the expanse of vegetation characteristics needed by breeding western yellow-billed cuckoos. The range and variation of stream flow frequency, magnitude, duration, and timing that will establish and maintain western yellow-billed cuckoo habitat can occur in different types of regulated and unregulated flow conditions depending on the interaction of the water feature and the physical characteristics of the landscape.

Hydrologic conditions at western yellow-billed cuckoo breeding sites can vary remarkably between years. At some locations during low rainfall years, water or saturated soil is not available. At other locations, particularly at reservoir intakes, riparian vegetation can be inundated for extended periods of time in some years and be totally dry in other years. This is particularly true of reservoirs like Lake Isabella in California, Roosevelt and Horseshoe Reservoirs in Arizona, and Elephant Butte Reservoir in New Mexico, all of which have relatively large western yellow-billed cuckoo populations. This year-to-year change in hydrology can affect food availability and habitat suitability for western yellow-billed cuckoos. Extended inundation reduces habitat suitability because larvae of sphinx moths pupate and eggs of katydids are laid underground, and prolonged flooding kills the larvae and eggs (Peterson *et al.* 2008), thus removing important food sources.

In some areas, managed hydrologic cycles above or below dams can create temporary western yellow-billed cuckoo habitat, but may not be able to support it for an extended amount of time, or may support varying amounts of habitat at different points of the cycle and in different years. Water management operations create varied situations that allow different plant species to thrive when water is released below a dam, held in a reservoir, or removed from a lakebed, and consequently, varying amounts of western yellow-billed cuckoo habitat are available from month to month and year to year as a result of dam operations. During wet years, habitat within a lake and below a dam can be flooded for extended periods of time and vegetation can be stressed or killed. During dry years, vegetated habitat can be desiccated and stressed or killed because of lack of water.

Humid conditions created by surface and subsurface moisture appear to be important habitat parameters for western yellow-billed cuckoo. The species has been observed as being restricted to nesting in moist riparian habitat in the arid West because of humidity requirements for successful hatching and rearing of young (Hamilton and Hamilton 1965, pp. 427; Gaines and Laymon 1984, pp. 75–76; Rosenberg *et al.* 1991, pp. 203–204). Western yellow-billed cuckoos have evolved larger eggs and thicker eggshells, which would help them cope with potential higher egg water loss in the hotter, dryer conditions (Hamilton and Hamilton 1965, pp. 426–430; Ar *et al.* 1974, pp. 153–158; Rahn and Ar 1974, pp. 147–152). A study on the South Fork Kern River showed that lower temperatures and higher humidity were found at nest sites when compared to areas along the riparian forest edge or outside the forest (Launer *et al.* 1990, pp. 6–7, 23). Recent research on the lower Colorado River has confirmed that western yellow-billed cuckoo nest sites had significantly higher daytime relative humidity (6–13 percent higher) and significantly lower daytime temperatures (2–4 degrees Fahrenheit (1–2 degrees Celsius) lower) than average forested sites (McNeil *et al.* 2011, pp. 92–101; McNeil *et al.* 2012, pp. 75–83).

Subsurface hydrologic conditions are equally important to surface water conditions in determining riparian vegetation patterns. Depth to groundwater plays an important part in the distribution of riparian vegetation and western yellow-billed cuckoo habitat. Where groundwater levels are elevated so riparian forest trees can access the water, habitat for nesting, foraging, and migrating western yellow-billed cuckoos can develop and thrive. Goodding's willows (*Salix gooddingii*) and Fremont cottonwoods (*Populus fremontii*) do not regenerate if the groundwater levels fall below 6 ft (2 m) (Shafroth *et al.* 2000, pp. 66–75). Goodding's willows cannot survive if groundwater levels drop below 10 ft (3 m), and Fremont cottonwoods cannot survive if groundwater drops below 16 ft (5 m) (Stromberg and Tiller 1996, pp. 123). Abundant and healthy riparian vegetation decreases and habitat becomes stressed and less productive when groundwater levels are lowered (Stromberg and Tiller. 1996, pp. 123–127).

Therefore, based on the information above, we identify flowing rivers and streams, elevated subsurface groundwater tables, and high humidity as essential physical and biological features of western yellow-billed cuckoo habitat.

Conditions for Germination and Regeneration of Riparian Zone Trees

The abundance and distribution of fine sediment deposited on floodplains is critical for the development, abundance, distribution, maintenance, and germination of trees in the riparian zone that become western yellow-billed cuckoo habitat. These sediments become seedbeds for germination and growth of the riparian vegetation upon which western yellow-billed cuckoos depend. These sediments must be accompanied by sufficient surface moisture for seed germination and sufficient ground water levels for survival of seedlings and saplings (Stromberg 2001, pp. 27–28). The lack of stream flow processes, which deposit such sediments, may lead riparian forested areas to senesce and to become degraded and not able to support the varied vegetative structure required for western yellow-billed cuckoo nesting and foraging.

Therefore, based on the information above, we identify flowing perennial rivers and streams and deposited fine sediments as essential physical and biological features of western yellow-billed cuckoo habitat.

Cover or Shelter

Riparian vegetation also provides the western yellow-billed cuckoo with cover and shelter while foraging and nesting. Placing nests in dense vegetation provides cover and shelter from predators that would search for adult western yellow-billed cuckoos, their eggs, nestlings, and fledged young. Northern harriers (*Circus cyaneus*) have been observed preying on western yellow-billed cuckoo nestlings at open riparian restoration sites. Dense foliage

precludes the entry of northern harriers into the habitat patch (Laymon 1998, pp. 12–14). Likewise, within the breeding range, western yellow-billed cuckoos also use riparian vegetation for cover and shelter as movement corridors between foraging sites and as post-breeding dispersal areas for adults and young. Movement corridors provide a place to rest and provide cover and shelter from predators during movement from one foraging area to another. These movement corridors within the breeding range, even though not used for nesting, are important resources affecting local and regional western yellow-billed cuckoo productivity and survival.

Therefore, based on the information above, we identify riparian trees including willow, cottonwood, alder (*Alnus* sp.), walnut (*Juglans* sp.), sycamore (*Platanus* sp.), boxelder (*Acer* sp.), ash (*Fraxinus* sp.), mesquite, and tamarisk that provide cover and shelter for foraging and dispersing western yellow-billed cuckoos as essential physical or biological features of western yellow-billed cuckoo habitat.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The western yellow-billed cuckoo utilizes nesting sites in riparian habitat where conditions are cooler and more humid than in the surrounding environment. Riparian habitat characteristics, such as dominant tree species, size and shape of habitat patches, tree canopy structure, vegetation height, and vegetation density, are important parameters of western yellow-billed cuckoo breeding habitat. Throughout the range, most nests are placed in willows (72 percent of 217 nests), and willows generally dominate nesting sites. Willow species used for nest trees include Goodding's black willow, red willow (*Salix laevigata*), and coyote willow (*Salix exigua*) (Laymon 1998, p. 7; Hughes 1999, p. 13).

Nests have also been documented in other riparian trees, including Fremont cottonwood (13 percent), mesquite (7 percent), tamarisk (4 percent), netleaf hackberry (*Celtis laevigata* var. *reticulata*) (2 percent), English walnut (*Juglans regia*) (1 percent), box elder (less than 1 percent), and soapberry (*Sapindus saponaria*) (less than 1 percent). They have also nested in Arizona walnut (*Juglans major*), alder (*Alnus rhombifolia* and *A. oblongifolia*), and Arizona sycamore (*Platanus wrightii*) (Laymon 1980, p. 8; Laymon 1998, p. 7; Hughes 1999, p. 13; Corman and Magill 2000, p. 16; Launer *et al.* 2000, p. 22; Halterman 2001, p. 11; Halterman 2002, p. 12; Halterman 2003, p. 11; Halterman 2004, p. 13; Corman and Wise-Gervais 2005, p. 202; Halterman 2005, p. 10; Halterman 2007, p. 5; Holmes *et al.* 2008, p. 21). Five pairs of western yellow-billed cuckoos were found nesting along the Sacramento River in a poorly groomed English walnut orchard that provided numerous densely foliaged horizontal branches on which western yellow-billed cuckoos prefer to build their nests (Laymon 1980, pp. 6–8). These orchard-nesting western yellow-billed cuckoos did not forage in the orchard, but flew across the river to forage in riparian habitat. Tamarisk is also a riparian species that may be associated with breeding under limited conditions; western yellow-billed cuckoo will sometimes build their nests and forage in tamarisk, but there is always a native riparian tree component within the occupied habitat (Gaines and Laymon 1984, p. 72; Johnson *et al.* 2008a, pp. 203–204). Johnson *et al.* (2008a, pp. 203–204) conducted Statewide surveys in Arizona of almost all historically occupied habitat of the western yellow-billed cuckoo in the late 1990s, and found 85 percent of all western yellow-billed cuckoo detections in habitat dominated by cottonwood with a strong willow and mesquite understory and only 5 percent within habitats dominated by tamarisk. Even in the tamarisk-dominated habitat, cottonwoods were still present at all but two of these sites.

Nest site characteristics have been compiled from 217 western yellow-billed cuckoo nests on the Sacramento and South Fork Kern Rivers in California, and the Bill Williams and San Pedro Rivers in Arizona. Western yellow-billed cuckoos generally nest in thickets dominated by willow trees. Nests are placed on well-foliaged branches closer to the tip of the branch than the trunk of the tree (Hughes 1999, p. 13). Nests are built from 4 ft to 73 ft (1 m to 22 m) above the ground and average 22 ft (7 m). Nests at the San Pedro River averaged higher (29 ft (9 m)) than either the Bill Williams River (21 ft (6 m)) or the South Fork Kern River (16 ft (5 m)). Nest trees ranged from 10 ft (3 m) to 98 ft (30 m) in height and averaged 35 ft (11 m). In older stands, heavily foliaged branches that are suitable for nesting often grow out into small forest openings or over sloughs or streams, making for ideal nest sites. In younger stands, nests are more often placed in vertical forks or tree crotches. Canopy cover directly above the nest is generally dense and averages 89 percent and is denser at the South Fork Kern River (93 percent) and Bill Williams River (94 percent) than at the San Pedro River (82 percent). Canopy closure in a plot around the nest averages 71 percent and was higher at the Bill Williams River (80 percent) than at the South Fork Kern River (74 percent) or San Pedro River (64 percent) (Laymon *et al.* 1997, pp. 22–23; Halterman 2001, pp. 28–29; Halterman 2002, p. 25; Halterman 2003, p. 27; Halterman 2004, p. 42; Halterman 2005, p. 32; Halterman 2006, p. 34).

In addition to the dense, generally willow-dominated nesting grove, western yellow-billed cuckoos need adequate foraging areas in the vicinity of the nest. Foraging areas can be less dense with lower levels of canopy cover and often have a high proportion of cottonwoods in the canopy. Optimal breeding habitat contains willow-dominated groves with dense canopy closure and well-foliaged branches for nest building with nearby foraging areas consisting of a mixture of cottonwoods and willows with a high volume of healthy foliage.

As discussed above, the habitat patches used by western yellow-billed cuckoos vary in size and shape with optimal areal extent being over 200 ac (81 ha) in size (see Space for Individual and Population Growth for Normal Behavior). The larger the site, the more likely it will provide suitable habitat for the western yellow-billed cuckoos and be occupied by nesting pairs (Laymon and Halterman 1989, pp. 274–275). Sites can be relatively dense, contiguous stands or irregularly shaped mosaics of dense vegetation with open areas.

Western yellow-billed cuckoos typically have large home ranges during the breeding season, averaging more than 100 ac (40 ha) per individual, and nest at low densities of less than 1 pair per 100 ac (40 ha) (Laymon *et al.* 1997, p. 19; Laymon and Williams 2002, p. 5; Halterman 2009, p. 93; Sechrist *et al.* 2009, p. vii; McNeil *et al.* 2010, p. 75; McNeil *et al.* 2011, p. 37; McNeil *et al.* 2012, p. 69). As a result, a large amount of habitat is required to support even a small population of western yellow-billed cuckoos.

Therefore, based on the information above, we identify blocks of riparian habitat greater than 200 ac (81 ha) in extent and greater than 325 ft (100 m) in width, with one or more densely foliaged, willow-dominated nesting sites and cottonwood-dominated foraging sites, to be a physical or biological feature for the species' habitat.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

The occupied rivers and streams that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the species.

Primary Constituent Elements for the Western Yellow-Billed Cuckoo

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the western yellow-billed cuckoo in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes including breeding, foraging and dispersing, we determine that the primary constituent elements specific to the western yellow-billed cuckoo are:

(1) Primary Constituent Element 1—*Riparian woodlands*. Riparian woodlands with mixed willow-cottonwood vegetation, mesquite-thorn-forest vegetation, or a combination of these that contain habitat for nesting and foraging in contiguous or nearly contiguous patches that are greater than 325 ft (100 m) in width and 200 ac (81 ha) or more in extent. These habitat patches contain one or more nesting groves, which are generally willow-dominated, have above average canopy closure (greater than 70 percent), and have a cooler, more humid environment than the surrounding riparian and upland habitats.

(2) Primary Constituent Element 2—*Adequate prey base*. Presence of a prey base consisting of large insect fauna (for example, cicadas, caterpillars, katydids, grasshoppers, large beetles, dragonflies) and tree frogs for adults and young in breeding areas during the nesting season and in post-breeding dispersal areas.

(3) Primary Constituent Element 3—*Dynamic riverine processes*. River systems that are dynamic and provide hydrologic processes that encourage sediment movement and deposits that allow seedling germination and promote plant growth, maintenance, health, and vigor (e.g. lower gradient streams and broad floodplains, elevated subsurface groundwater table, and perennial rivers and streams). This allows habitat to regenerate at regular intervals, leading to riparian vegetation with variously aged patches from young to old.

Because the species exists in disjunct breeding populations across a wide geographical and elevational range and is subject to dynamic events, the river segments described below are essential to the conservation of the western yellow-billed cuckoo, because they maintain stability of subpopulations, provide connectivity between populations and habitat, assist in gene flow, and protect against catastrophic loss. The occupied rivers and streams that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the species. All river segments proposed as western yellow-billed cuckoo critical habitat are within the geographical area occupied by the species as defined by the species' DPS at the time of listing (i.e., currently) and contain the features essential to the conservation of the species. The features essential to the conservation of the species and refined primary constituent elements are present throughout the river segments selected, but the specific quality of riparian habitat for nesting, migration, and foraging will vary in condition and location over time due to plant succession and the dynamic environment in which they exist.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

We believe the areas proposed to be designated as critical habitat will require some level of management or protection or both to address the current and future threats to the western yellow-billed cuckoo and maintain the physical or biological features essential to the conservation of the species. Areas in need of management include not only currently suitable locations where the species may be present, but also areas that may become suitable in the future. The critical habitat sites that we are proposing are all occupied, but may include both currently suitable habitat and adjacent habitat that will become suitable in the near future.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the western yellow-billed cuckoo. The western yellow-billed cuckoo may also be dependent upon factors beyond the critical habitat boundaries that are important in maintaining ecological processes such as hydrology; streamflow; hydrological regimes; plant germination, growth, maintenance, and regeneration; sedimentation; ground water elevations; plant health and vigor; or support of prey populations. Individual or small populations of western yellow-billed cuckoos may nest in habitat outside of the proposed critical habitat units.

A detailed discussion of threats to the western yellow-billed cuckoo and its habitat can be found in the Summary of the Factors Affecting the Species section of the proposed listing rule for the species published in the **Federal Register** on October 3, 2013 (78 FR 61621). The features essential to the conservation of this species and the activities which may require special management considerations or protection are summarized below:

Threat: Disruption of hydrological processes that are necessary to maintain a healthy riparian system.

Management Considerations: Hydrological elements and processes can be managed to benefit riparian systems. Streamflows can be restored by managing dams to mimic the natural hydrology to the greatest extent possible, and to support the health and regeneration of native riparian shrub and tree vegetation. Reservoirs can be managed to reduce prolonged flooding of riparian habitat in the flood control drawdown zone, which kills or damages native riparian vegetation. Restoration of natural hydrological regimes or management of systems so that they mimic natural regimes that favor germination and growth of native plant species are important. Improving timing of water drawdown in reservoirs to coincide with the seed dispersal and germination of native species can be effective in restoring native riparian vegetation. Reducing water diversions and ground water pumping that degrade riparian systems can benefit the western yellow-billed cuckoo and its habitat. Reduction of bank stabilization features, including rip-rap, levees, or other structures, that limit natural fluvial processes can promote maturation of the native riparian vegetation and prevent regular habitat regeneration. Clearing channels for flood flow conveyance or plowing of floodplains can be avoided. Projects can be managed to minimize clearing of native vegetation to help ensure that desired native species persist.

Threat: Loss of riparian habitat regeneration caused by poorly managed grazing.

Management Considerations: Biotic elements and processes can be managed to benefit riparian systems. Managed grazing areas, season, and use in riparian zones can increase western yellow-billed cuckoo habitat quality and quantity. Specifically, managing grazing so that native riparian trees and shrubs will regenerate on a regular basis is especially beneficial.

Threat: Loss of riparian habitat from development activities and extractive uses.

Management Considerations: Limiting extractive uses, such as gravel mining and woodcutting, in the vicinity of western yellow-billed cuckoo habitat is an important management tool. Clearing of riparian habitat for agriculture, industrial and residential development, and road building and maintenance is detrimental to the species and should be moved from the floodplain management zone to the greatest extent possible.

Threat: Degradation of riparian habitat as a result of expansion of nonnative vegetation.

Management Considerations: Removal of nonnative vegetation in areas where natural regeneration of native riparian species may be a valuable management tool. On some sites, replacement of nonnative vegetation with native riparian tree species through active restoration plantings can speed up the habitat recovery process and more quickly benefit the western yellow-billed cuckoo.

Threat: Destruction of riparian habitat by uncontrolled wildfire.

Management Considerations: Fire can be managed to maintain and enhance habitat quality and quantity. Fires in the riparian zone can be suppressed and the risk of wildlife fire can be reduced by restoring ground water, base flows, flooding, and natural hydrological regimes. Reduction of fires caused by recreational activities and the reduction of fuel buildup and prevention of introduction of flammable exotic species can also be beneficial.

Threat: Reduction of prey insect abundance by the application of pesticides.

Management Considerations: Avoiding application of pesticides that would limit the abundance of large insects and their larva on or in the vicinity of riparian areas at any time of year would help to maintain an adequate prey base for the western yellow-billed cuckoo.

These management activities would protect and enhance the physical or biological features for the western yellow-billed cuckoo by reducing or eliminating the above threats. Management activities that could benefit the species are not limited to those listed above. Furthermore, management of critical habitat would help provide additional and improved habitat that would give the species the best possible chance of recovery.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and its implementing regulation at 50 CFR 424.12(b), we reviewed the available information pertaining to the habitat requirements of the species and identified occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied—is essential for the conservation of the species. We are defining the geographical area (*i.e.,* range) occupied at the time of listing as the geographical area that encompasses the breeding range of the western yellow-billed cuckoo based on breeding records between 1998 and 2012. This timeframe was chosen because the last Statewide western yellow-billed cuckoo surveys in Arizona were conducted in 1998 to 1999, and the last Statewide western yellow-billed cuckoos surveys in California were in 1999 to 2000. The majority of the sites have not been surveyed since the 1998 to 2000 time period, though key sites such as the Sacramento, Verde, Colorado, San Juan, and Rio Grande Rivers and several other smaller sites have been surveyed more recently. The 1998 to 2012 time period represents the best scientific data available.

We are not currently proposing to designate any specific areas outside the geographical area occupied by the species because the areas proposed for designation encompass the vast majority of areas where the species currently regularly occurs and nests. However, we are including within the proposed units habitats that are intermittently used by the species as areas for movement, dispersal, foraging, or connectivity. We have determined that limiting the designation of critical habitat to confirmed breeding sites within the units is insufficient to conserve and recover the species because: (1) Some breeding habitat that is not currently suitable will become suitable in the future; (2) the species needs habitat areas that are arranged spatially to maintain connectivity and allow dispersal within and between units; and (3) food resources change both within and between years, and additional habitat is needed to accommodate this change. We have not included critical habitat units within Oregon or Washington because the species has been extirpated as a breeder from those States for the past 90 years, and recent observations of the species have not coincided with suitable habitat and appear to be migrants. The habitat farther south in California that is currently occupied at very low densities and is being proposed as critical habitat is sufficient to address the far-western part of the species' range for recovery of the species. Should we receive information during the public comment period that supports designating as critical habitat areas not included in the proposed units (see Proposed Critical Habitat Designation section below), we will reevaluate our current proposal.

We employed the following criteria to select appropriate areas for this proposed designation. These criteria are based on well-accepted conservation biology principles for conserving species and their habitats, such as those described by Meffe and Carroll (1997, pp. 347–383); Shaffer and Stein (2000, pp. 301–321); and Tear *et al.* (2005, pp. 835–849).

(1) *Representation.* Areas were chosen to represent the varying habitat types across the species' range. Habitats in the arid Southwest differ significantly from those in northern California. Additional areas are included if they are considered a unique habitat or climate, or they are situated to facilitate interchange between otherwise widely separated units. By protecting a variety of habitats and facilitating interchange between them, we increase the ability of the species to adjust to various limiting factors that affect the population, such as habitat loss and degradation or climate change.

(2) *Resiliency and redundancy.* Areas were selected throughout the range of the western yellow-billed cuckoo to allow the species to move and expand. By identifying a number of areas of appropriate size throughout the species' range at the time of listing, we provide the western yellow-billed cuckoo opportunities to move to adjust for changes in habitat availability, food sources, and pressures on survivorship or reproductive success. Designating

units in appropriate areas throughout the range of the western yellow-billed cuckoo allows for seasonal migration and year-to-year movements. We consider this necessary to conserve the species because it assists in counterbalancing continued habitat loss and degradation, and complements the dynamic nature of riparian systems. Having units across the species' range helps maintain a robust, well-distributed population and enhances survival and productivity of the western yellow-billed cuckoo as a whole, facilitates interchange of individuals between units, and promotes recolonization of any sites within the current range that experience declines or local extirpations due to low productivity or temporary habitat loss.

(3) *Breeding areas.* These areas were selected because they contain the physical and biological features necessary for western yellow-billed cuckoos to breed and produce offspring and are essential to the conservation of the species. Selected sites include areas currently being used by breeding western yellow-billed cuckoos. By selecting breeding areas across the western yellow-billed cuckoo's range, we can assist in conserving the species' genetic variability for long-term sustainability of the species.

(4) *Areas to maintain connectivity of habitat.* While all units contain all of the essential physical or biological features, some portions of some units may lack certain elements or contain marginal habitat. These areas are included within a unit if they are needed for connectivity, have potential to become suitable habitat, or contribute to the hydrologic and geologic processes essential to the ecological function of the system. These areas are essential to the conservation of the species because they maintain connectivity within populations, allow for species movement throughout the course of a given year, allow for population expansion into areas that were historically occupied, and allow for species movement as a result of potential habitat changes due to the dynamic nature of riparian systems and to climate change.

(5) *Areas that provide for variable food resources or habitat.* Yellow-billed cuckoos are a migrant species keenly adapted to take advantage of localized food resource outbreaks or habitat availability. We include areas within the proposed designated units not currently being used as breeding sites to provide spatial and temporal changes in food abundance.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack physical or biological features for the western yellow-billed cuckoo. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger consultation under section 7 of the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in adjacent critical habitat.

We are proposing to designate as critical habitat lands within the geographical area occupied by the western yellow-billed cuckoo at the time of listing and that contain the physical or biological features necessary to support life-history processes essential to the conservation of the western yellow-billed cuckoo. These areas have sufficient primary constituent elements (PCEs) (described above) to enable the western yellow-billed cuckoo to carry out its essential life processes.

Compared to conditions historically, the areas currently used for nesting by the western yellow-billed cuckoo are very limited and disjunct. The breeding population is small, with 680 to 1,025 nesting pairs (350 to 495 pairs in the United States and 330 to 530 nesting pairs in Mexico), and with no site exceeding 60 nesting pairs. Estimating numbers is problematic because an individual can nest in more than one location in a single year, possibly causing overestimates of the number of nesting pairs. The western yellow-billed cuckoo is susceptible to random events such as major storms during migration or prolonged drought, and is likely to be reduced in numbers in the future according to current information on population trends. As such, all known nesting areas are occupied at the time of listing and contain the PCEs. We are proposing to designate as critical habitat all known nesting areas greater than 200 ac (81 ha) in extent in the area occupied by the western yellow-billed cuckoo for nesting north of the border with Mexico and south of the border with Canada. Sites that contain less than 200 ac (81 ha) of riparian habitat are not included. These small, isolated sites with sufficient habitat for only one or two pairs of western yellow-billed cuckoos are not essential to the survival and recovery of the species.

The amount and distribution of critical habitat we are proposing will allow populations of western yellow-billed cuckoo the opportunity to: (1) Maintain their existing distribution; (2) move between areas depending on food, resource, and habitat availability; (3) increase the size of the population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and (4) maintain their ability to withstand local- or unit-level environmental fluctuations or catastrophes.

Selecting Critical Habitat Sites Within the Range Occupied by Western Yellow-Billed Cuckoo at the Time of Listing

We define proposed critical habitat as sites that contains the physical or biological features essential to the conservation of the species within the geographical area occupied by the species (range) at the time of listing. These features include riparian habitat for foraging with additional areas (one or more groves) of closed canopy mesic (moist) habitat for nesting (200 ac (81 ha) minimum total). The critical habitat units selected were either occupied by mated pairs of western yellow-billed cuckoo in at least one year between 1998 and 2012 or were occupied by individual western yellow-billed cuckoos of unknown mating status during the breeding season (late June, July, mid-August) in at least 2 years between 1998 and 2012. For purposes of this document, nesting pairs were determined based on factors including actual nests located, pairs exhibiting nesting activity, and single western yellow-billed cuckoos in suitable habitat during the breeding season. Sites that currently contain less than 200 ac (81 ha) of riparian habitat were not selected. These small, isolated sites less than 200 ac (81 ha) with sufficient habitat for only one or two pairs of western yellow-billed cuckoos tend to be occupied sporadically and are not considered essential to the conservation and recovery of the species.

To delineate the proposed units of critical habitat, we plotted on maps all breeding season occurrences of the western yellow-billed between 1998 and 2012. We used reports prepared by the U.S. Geological Survey (USGS), U.S. Forest Service (USFS), National Park Service (NPS), Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), the Salt

River Project, State wildlife agencies, State natural diversity data bases, researchers, nongovernment organizations, universities, and consultants, as well as available information in our files, to determine the location of specific breeding areas within the geographical area occupied by the western yellow-billed cuckoo at the time of listing. We then delineated riparian habitat around that location, as well as riparian habitat upstream and downstream from the occurrence location, until a break in the riparian habitat of 0.25 miles (mi) (0.62 kilometers (km)) or more was reached. Western yellow-billed cuckoos rarely traverse distances across unwooded spaces greater than 0.25 mi (0.62 km) in their daily foraging activities. Sites where migrant western yellow-billed cuckoos were found, but where there is less than 100 ac (40 ha) of riparian habitat with no suitable nesting sites and suitable habitat is unlikely to develop in the future, are not proposed as critical habitat (for example, Southeast Farallon Islands or Furnace Creek Ranch in Death Valley).

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0011, and at the Sacramento Fish and Wildlife Office at *http://www.fws.gov/sacramento* (see **FOR FURTHER INFORMATION CONTACT,** above).

Proposed Critical Habitat Designation

We are proposing 80 units as critical habitat for western yellow-billed cuckoo. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for western yellow-billed cuckoo. All of the units located within the geographical area occupied at the time of listing contain all of the identified elements of physical or biological features and support multiple life-history processes. The approximate area of each proposed critical habitat unit and ownership information is shown in Table 1.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR WESTERN YELLOW-BILLED CUCKOO

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Name of unit	Size of unit in Ac (Ha)	Federal	State	Tribal	Other
1	CA–1 Eel River	4,909 (1,987)	0 (0)	0 (0)	0 (0)	4,909 (1,987)
2	CA–2 Sacramento River	35,418 (14,333)	10,203 (4,129)	6,375 (2,580)	14 (6)	18,827 (7,619)
3	CA–3 Sutter Bypass	1,090 (441)	566 (229)	0 (0)	0 (0)	524 (212)
4	CA–4 South Fork Kern River Valley	2,862 (1,158)	1,218 (493)	0 (0)	0 (0)	1,644 (665)
5	CA–5 Owens River	1,598 (647)	1 (<1)	0 (0)	0 (0)	1,597 (647)
6	CA–6 Prado Flood Control Basin	4,406 (1,784)	1,300 (526)	0 (0)	0 (0)	3,106 (1,257)
7	CA/AZ–1 Colorado River 1	78,961 (31,954)	32,576 (13,183)	4,187 (1,695)	22,485 (9,099)	19,713 (7,978)
8	CA/AZ–2 Colorado River 2	23,452 (9,491)	15,189 (6,147)	1 (<1)	4,730 (1,914)	3,532 (1,429)
9	AZ–1 Bill Williams River	3,390 (1,372)	2,640 (1,068)	0 (0)	0 (0)	750 (304)
10	AZ–2 Alamo Lake	2,794 (1,131)	1,840 (745)	0 (0)	0 (0)	954 (386)
11	AZ–3 Lake Mead	6,734 (2,725)	6,734 (2,725)	0 (0)	0 (0)	0 (0)
12	AZ–4 Lower Gila River	12,047 (4,875)	7,413 (3,000)	1,086 (440)	0 (0)	3,548 (1,436)
13	AZ–5 Upper Santa Maria River	1,636 (662)	573 (232)	336 (136)	0 (0)	727 (294)
14	AZ–6 Hassayampa River	2,838 (1,148)	591 (239)	10 (4)	0 (0)	2,237 (905)
15	AZ–7 Gila and Salt Rivers	17,585 (7,116)	4,719 (1,910)	2,642 (1,069)	868 (351)	9,356 (3,786)
16	AZ–8 Agua Fria River	3,337 (1,350)	1,802 (729)	235 (95)	0 (0)	1,300 (526)
17	AZ–9 Upper Verde River	4,531 (1,834)	2,217 (897)	776 (314)	0 (0)	1,538 (622)
18	AZ–10 Oak Creek	1,323 (535)	433 (175)	160 (65)	0 (0)	730 (295)
19	AZ–11 Beaver Creek and tributaries	2,082 (842)	1,491 (603)	0 (0)	3 (1)	588 (238)
20	AZ–12 Lower Verde River and West Clear Creek.	2,053 (831)	447 (181)	31 (13)	43 (17)	1,532 (620)
21	AZ–13 Horseshoe Dam	626 (253)	626 (253)	0 (0)	0 (0)	0 (0)
22	AZ–14 Tonto Creek	3,670 (1,485)	2,529 (1,023)	0 (0)	0 (0)	1,141 (462)
23	AZ–15 Pinal Creek	419 (170)	30 (12)	0 (0)	0 (0)	389 (157)
24	AZ–16 Bonita Creek	929 (376)	828 (335)	0 (0)	0 (0)	101 (41)
25	AZ–17 San Francisco River 1	1,327 (537)	1,192 (482)	0 (0)	0 (0)	135 (55)
26	AZ–18 Upper San Pedro River	21,786 (8,816)	11,349 (4,593)	1,292 (523)	0 (0)	9,145 (3,701)
27	AZ–19 Hooker Hot Springs	375 (152)	163 (66)	4 (2)	0 (0)	208 (84)
28	AZ–20 Lower San Pedro and Gila Rivers.	23,399 (9,469)	2,957 (1,197)	2,282 (923)	729 (295)	17,431 (7,054)
29	AZ–21 Picacho Reservoir	2,789 (1,129)	335 (136)	941 (381)	0 (0)	1,513 (612)
30	AZ–22 Peritas Wash	894 (362)	170 (69)	724 (293)	0 (0)	0 (0)
31	AZ–23 Arivaca Wash and San Luis Wash.	5,765 (2,333)	4,662 (1,887)	89 (36)	0 (0)	1,014 (410)
32	AZ–24 Sonoita Creek	1,610 (652)	0 (0)	775 (314)	0 (0)	835 (338)
33	AZ–25 Upper Cienega Creek	5,204 (2,106)	4,630 (1,874)	574 (232)	0 (0)	0 (0)
34	AZ–26 Santa Cruz River	3,689 (1,493)	0 (0)	0 (0)	0 (0)	3,689 (1,493)
35	AZ–27 Black Draw	890 (360)	405 (164)	45 (18)	0 (0)	440 (178)
36	AZ–28 Gila River 1	20,726 (8,388)	780 (316)	216 (87)	10,183 (4,121)	9,547 (3,864)
37	AZ–29 Salt River	2,590 (1,048)	2,469 (999)	0 (0)	0 (0)	121 (49)
38	AZ–30 Lower Cienega Creek	2,360 (955)	0 (0)	759 (307)	0 (0)	1,601 (648)
39	AZ–31 Blue River	1,025 (415)	1,025 (415)	0 (0)	0 (0)	0 (0)
40	AZ–32 Pinto Creek South	373 (151)	368 (149)	0 (0)	0 (0)	5 (2)
41	AZ–33 Aravaipa Creek	1,209 (489)	470 (190)	1 (<1)	0 (0)	738 (299)
42	AZ–34 Lower Verde River	1,079 (437)	1,063 (430)	0 (0)	0 (0)	16 (6)
43	AZ–35 Gila River 3	2,194 (888)	1,126 (456)	1 (<1)	0 (0)	1,067 (432)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR WESTERN YELLOW-BILLED CUCKOO—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Name of unit	Size of unit in Ac (Ha)	Federal	State	Tribal	Other
44	AZ–36 Pinto Creek North	427 (173)	415 (168)	0 (0)	0 (0)	12 (5)
45	AZ–37 Florida Wash	188 (76)	113 (46)	32 (13)	0 (0)	43 (17)
46	NM–1 San Juan River 1	6,354 (2,571)	680 (275)	177 (72)	1,041 (421)	4,456 (1,804)
47	NM–3 San Francisco River 2	2,039 (825)	738 (299)	10 (4)	0 (0)	1,291 (522)
48	NM–4 Gila River 2	4,179 (1,691)	975 (395)	201 (81)	0 (0)	3,003 (1,216)
49	NM–5 Mimbres River	260 (105)	0 (0)	0 (0)	0 (0)	260 (105)
50	NM–6 Upper Rio Grande 1	1,830 (741)	0 (0)	0 (0)	1,313 (532)	517 (209)
51	NM–7 Middle Rio Grande 2	1,173 (475)	0 (0)	0 (0)	1,173 (475)	0 (0)
52	NM–8 Middle Rio Grande 1	61,959 (25,074)	19,559 (7,915)	938 (380)	9,509 (3,848)	31,953 (12,931)
53	NM–9 Upper Gila River	4,614 (1,867)	984 (398)	423 (171)	0 (0)	3,207 (1,298)
54	CO–1 Yampa River	6,938 (2,808)	0 (0)	1,199 (485)	0 (0)	5,739 (2,322)
55	CO–2 Colorado River 3	4,002 (1,620)	31 (13)	418 (169)	0 (0)	3,553 (1,438)
56	CO–3 North Fork Gunnison River	2,326 (941)	115 (47)	0 (0)	0 (0)	2,211 (895)
57	CO–4 Uncompahgre River	4,506 (1,824)	2 (1)	7 (3)	0 (0)	4,497 (1,820)
58	CO–5 Gunnison River	937 (379)	16 (6)	0 (0)	0 (0)	921 (373)
59	CO–6 Rio Grande 3	9,765 (3,952)	14 (6)	0 (0)	0 (0)	9,751 (3,946)
60	CO–7 Conejos River	8,986 (3,637)	330 (134)	47 (19)	0 (0)	8,609 (3,484)
61	UT–1 Green River 1	17,256 (6,983)	4,701 (1,902)	4,411 (1,786)	6,848 (2,772)	1,296 (524)
62	UT–2 Pigeon Water Creek and Lake Fork River.	3,041 (1,231)	0 (0)	0 (0)	1,340 (543)	1,701 (688)
63	UT–3 Colorado River 4	579 (234)	209 (85)	238 (96)	0 (0)	132 (53)
64	UT–4 Dolores River	401 (162)	115 (47)	150 (61)	0 (0)	136 (55)
65	UT–5 Green River 2	4,657 (1,885)	4,657 (1,885)	0 (0)	0 (0)	0 (0)
66	UT–6 San Juan River 2	2,198 (889)	2,198 (889)	0 (0)	0 (0)	0 (0)
67	UT–7 San Juan River 3	9,692 (3,922)	1,589 (643)	38 (15)	7,766 (3,144)	299 (121)
68	UT–8 Virgin River 2	1,390 (562)	32 (13)	6 (2)	0 (0)	1,352 (547)
69	ID–1 Snake River 1	9,294 (3,761)	3,692 (1,494)	2 (1)	2,257 (913)	3,343 (1,353)
70	ID–2 Snake River 2	11,439 (4,629)	5,861 (2,372)	106 (43)	0 (0)	5,472 (2,214)
71	ID–3 Big Wood River	1,129 (457)	88 (36)	85 (34)	0 (0)	956 (387)
72	ID–4 Henry's Fork and Teton Rivers	3,449 (1,396)	396 (160)	341 (138)	0 (0)	2,712 (1,098)
73	NV–1 Upper Muddy River	1,472 (596)	1,315 (532)	0 (0)	0 (0)	157 (64)
74	NV–3 Lower Muddy River	437 (177)	0 (0)	0 (0)	0 (0)	437 (177)
75	NV–4 Carson River	4,348 (1,760)	1,149 (465)	13 (5)	0 (0)	3,186 (1,289)
76	NV/AZ–1 Virgin River 1	11,266 (4,559)	7,137 (2,888)	52 (21)	0 (0)	4,077 (1,650)
77	WY–1 Green River 3	7,471 (3,023)	5,705 (2,309)	629 (255)	0 (0)	1,137 (460)
78	WY/UT–1 Henry's Fork of Green River	9,306 (3,760)	144 (58)	228 (92)	0 (0)	8,934 (3,615)
79	TX–1 Arroyo Caballo, Rio Grande	1,261 (510)	0 (0)	0 (0)	0 (0)	1,261 (510)
80	TX–2 Terlingua Creek and Rio Grande.	7,792 (3,153)	7,792 (3,153)	0 (0)	0 (0)	0 (0)
Total		546,335 (221,094)	199,882 (80,882)	33,293 (13,473)	70,302 (28,450)	242,859 (98,282)

Note: Area sizes may not sum due to rounding.

Unit Descriptions

All units are within the geographical area occupied by the species at the time of listing. All units include the following physical or biological features essential to the conservation of the western yellow-billed cuckoo: (1) Rivers and streams of low gradient with a broad floodplain; (2) flowing rivers and streams, elevated subsurface groundwater tables, and high humidity; (3) rivers and streams that allow functioning ecological processes and support riparian habitat regeneration (such as deposited fine sediments for riparian seed germination); (4) areas of riparian woodlands with mixed willow-cottonwood at least 200 ac (80 ha) in extent and 325 ft (100 m) in width with one or more densely foliaged nesting groves; and (5) an abundant large insect fauna during the nesting season. We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the western yellow-billed cuckoo, below.

Special management considerations or protection may be required to conserve the physical or biological features essential to the conservation of the species within each unit. These special management considerations include actions to address the main threats from alteration of hydrology from (A) dams, (B) surface water diversions, (C) ground water diversions, and (D) fluctuating reservoir levels. Encroachment into the floodplain may also need special management considerations and can come from (E) agricultural and (F) other development activities, (G) bank stabilization and (H) levee construction and maintenance activities, (I) road and bridge maintenance activities, and (J) gravel mining. Other threats that may need special management considerations include (K) habitat degradation associated with poorly managed livestock grazing (generally identified as ''overgrazing''), (L) pesticide drift from adjacent agricultural activities, (M) wood-cutting, and (N) recreation in the form of off-highway vehicle use within the riparian zone. To ensure the continued suitability of the unit, it may be necessary to implement special management considerations including: (O) Manage the hydrology to mimic natural riverflows and floodplain process, (P) prevent encroachment into the floodplain, and (Q) control expansion of and habitat degradation

caused by nonnative vegetation. These threats and special management considerations are summarized in Table 2.

TABLE 2—THREATS TO HABITAT AND POTENTIAL SPECIAL MANAGEMENT CONSIDERATIONS

[See end of table for definition of codes]

Critical habitat unit	Name of unit	Threats from alteration of hydrology	Threats from floodplain encroachment	Other threats	Special management
1	CA–1 Eel River	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P.
2	CA–2 Sacramento River	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
3	CA–3 Sutter Bypass	B, C	E, F, G, H	K, L, N	O, P, Q.
4	CA–4 South Fork Kern River Valley	A, B, C, D	E, F, G, H, I	K, L, M, N	O, P, Q.
5	CA–5 Owens River	A, B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
6	CA–6 Prado Flood Control Basin	A, D	F, I	N	P, Q.
7	CA/AZ–1 Colorado River 1	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
8	CA/AZ–2 Colorado River 2	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
9	AZ–1 Bill Williams River	A, B, C		K, M, N	O, Q.
10	AZ–2 Alamo Lake	B, C, D	F	K, M, N	O, P, Q.
11	AZ–3 Lake Mead	B, C, D		K, M, N	O, P, Q.
12	AZ–4 Lower Gila River	A, B, C	E, F, G, H, I	K, L, M	O, P, Q.
13	AZ–5 Upper Santa Maria River	B, C	F, I	K, M	O, P, Q.
14	AZ–6 Hassayampa River	B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
15	AZ–7 Gila and Salt Rivers	A, B, C	E, F, G, H, I, J	L, M, N	O, P, Q.
16	AZ–8 Agua Fria River	A, B, C	F, G, I	K, L, M, N	O, P, Q.
17	AZ–9 Upper Verde River	B, C	F, G, I	K, M, N	O, P, Q.
18	AZ–10 Oak Creek	B, C	F, G, I	K, M, N	O, P, Q.
19	AZ–11 Beaver Creek and tributaries	B, C	F, G, I	K, M, N	O, P, Q.
20	AZ–12 Lower Verde River and West Clear Creek	A, B, C	F, G, I	K, M, N	O, P, Q.
21	AZ–13 Horseshoe Dam	B, C, D		K, M, N	O, P, Q.
22	AZ–14 Tonto Creek	B, C, D	F, G, I	K, M, N	O, P, Q.
23	AZ–15 Pinal Creek	B, C	F, G, I, J	K, L, M, N	O, P, Q.
24	AZ–16 Bonita Creek	B, C	F, I	K, M, N	O, P, Q.
25	AZ–17 San Francisco River 1	B, C	F, I	K, M, N	O, P, Q.
26	AZ–18 Upper San Pedro River	B, C	E, F, G, I	K, L, M, N	O, P, Q.
27	AZ–19 Hooker Hot Springs	B, C	F	K, M, N	O, P, Q.
28	AZ–20 Lower San Pedro and Gila Rivers	A, B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
29	AZ–21 Picacho Reservoir	B, C, D	F	K, N	O, P, Q.
30	AZ–22 Peritas Wash	B, C	F	K, M, N	O, P, Q.
31	AZ–23 Arivaca Wash and San Luis Wash	B, C	F, I	K, M, N	O, P, Q.
32	AZ–24 Sonoita Creek	B, C, D	F, G, I	K, M, N	O, P, Q.
33	AZ–25 Upper Cienega Creek	B, C	F	K, M, N	O, P, Q.
34	AZ–26 Santa Cruz River	B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
35	AZ–27 Black Draw	B, C	F	K, M, N	O, P, Q.
36	AZ–28 Gila River 1	B, C	E, F, G, H	K, L, M, N	O, P, Q.
37	AZ–29 Salt River	B, C, D	F, G, I	K, M, N	O, P, Q.
38	AZ–30 Lower Cienega Creek	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
39	AZ–31 Blue River	A, B, C	G, I, J	K, M, N	O, P, Q.
40	AZ–32 Pinto Creek South	A, B, C	F, G, I, J	K, N	O, P, Q.
41	AZ–33 Aravaipa Creek	B, C	F, I, J	K, M, N	O, P, Q.
42	AZ–34 Lower Verde River	A, B, C	F, G, I, J	K, M, N	O, P, Q.
43	AZ–35 Gila River 3	A, B, C	F, G, I, J	K, N	O, P, Q.
44	AZ–36 Pinto Creek North	B, C	F, I, J	K, N	O, P, Q.
45	AZ–37 Florida Wash	B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
46	NM–1 San Juan River 1	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
47	NM–3 San Francisco River 2	B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
48	NM–4 Gila River 2	B, C	E, F, G, I, J	K, L, M, N	O, P, Q.
49	NM–5 Mimbres River	B, C	F, I	K, M, N	O, P, Q.
50	NM–6 Upper Rio Grande 1	A, B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
51	NM–7 Middle Rio Grande 2	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
52	NM–8 Middle Rio Grande 1	A, B, C, D	E, F, G, H, I, J	K, L, M, N	O, P, Q.
53	NM–9 Upper Gila River	B, C	E, F, G, I, J	K, L, M, N	O, P, Q.
54	CO–1 Yampa River	B, C	E, F, G, H, I, J	K, M, N	O, P, Q.
55	CO–2 Colorado River 3	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
56	CO–3 North Fork Gunnison River	B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
57	CO–4 Uncompahgre River	B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
58	CO–5 Gunnison River	B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
59	CO–6 Rio Grande 3	B, C	F, G, H, I, J	K, M, N	O, P, Q.
60	CO–7 Conejos River	B, C	F, G, H, I, J	K, M, N	O, P, Q.
61	UT–1 Green River 1	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
62	UT–2 Pigeon Water Creek and Lake Fork River	B, C	F, G, H, I, J	K, L, M, N	O, P, Q.
63	UT–3 Colorado River 4	B, C	E, G, H, I	K, M	O, P, Q.
64	UT–4 Dolores River	B, C	G, I	K, M	O, P, Q.
65	UT–5 Green River 2	B, C		K, M	O, P, Q.
66	UT–6 San Juan River 2	B, C, D		K, M, N	O, P, Q.

TABLE 2—THREATS TO HABITAT AND POTENTIAL SPECIAL MANAGEMENT CONSIDERATIONS—Continued

[See end of table for definition of codes]

Critical habitat unit	Name of unit	Threats from alteration of hydrology	Threats from floodplain encroachment	Other threats	Special management
67	UT–7 San Juan River 3	B, C	I	K, M, N	O, P, Q.
68	UT–8 Virgin River 2	A, B, C	E, F, G, H, I, J	K, L, M, N	O, P, Q.
69	ID–1 Snake River 1	A, B, C, D	E, F, G, H, I	K, L, M, N	O, P, Q.
70	ID–2 Snake River 2	A, B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
71	ID–3 Big Wood River	B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
72	ID–4 Henry's Fork and Teton Rivers	A, B, C	E, F, G, H, I	K, L, M, N	O, P, Q.
73	NV–1 Upper Muddy River	B, C, D	E, F, G, H, I, J	K, L, M, N	O, P, Q.
74	NV–3 Lower Muddy River	A, B, C	E, F, G, H, I, J	K, L, N	O, P, Q.
75	NV–4 Carson River	A, B, C, D	E, F, G, H, I, J	K, L, N	O, P, Q.
76	NV/AZ–1 Virgin River 1	B, C, D	E, F, G, H, I, J	K, L, M, N	O, P, Q.
77	WY–1 Green River 3	A, B, C	E, F, G, I, J	K, L, M, N	O, P, Q.
78	WY/UT–1 Henry's Fork of Green River	B, C	F, G, H, I	K, M	O, P, Q.
79	TX–1 Arroyo Caballo, Rio Grande	A, B, C	E, F, G, H I	K, L, M, N	O, P, Q.
80	TX–2 Terlingua Creek and Rio Grande	A, B, C		K, M, N	O, P, Q.

Definition of Codes. Threats from alteration of hydrology: (A) Change in hydrology from upstream dams; (B) surface diversions; (C) groundwater withdrawals; and (D) fluctuating reservoir levels. Threats from floodplain encroachment: (E) Agricultural development; (F) other development (residential, industrial, etc.); (G) bank stabilization; (H) levee construction and maintenance; (I) road and bridge construction and maintenance; and (J) gravel mining. Other threats: (K) Overgrazing; (L) pesticide drift; (M) woodcutting; and (N) recreation. Special management considerations: (O) Manage hydrology to mimic natural flows and floodplain processes; (P) prevent encroachment into floodplain; and (Q) control expansion of and habitat degradation caused by nonnative vegetation.

California (6 Units)

Unit 1: CA–1 Eel River; Humboldt County

Proposed critical habitat unit CA–1 is 4,909 ac (1,987 ha) in extent. It is an 8-mi (13-km)-long continuous segment of the lower Eel River from west of the town of Fortuna downstream to a point in the estuary (mouth) of the lower Eel River in Humboldt County, California. The entire proposed critical habitat unit is privately owned. The site represents the northwestern limit of the known current breeding range of the species.

Unit 2: CA–2 Sacramento River; Colusa, Glenn, Butte, and Tehama Counties

Proposed critical habitat unit CA–2 is 35,418 ac (14,333 ha) in extent. It is a 69-mi (111-km)-long continuous segment of the Sacramento River starting 5 mi (8 km) southeast of the city of Red Bluff in Tehama County, California, to the downstream boundary of the Colusa-Sacramento River State Recreation Area next to the town of Colusa in Colusa County, California. The middle segment of the river flows through Butte and Glenn Counties. Approximately 18,827 ac (7,619 ha), or 53 percent, of proposed unit CA–2 are privately owned; 6,375 ac (2,580 ha), or 7 percent, are in State ownership and include Woodson Bridge State Recreation Area, Bidwell-Sacramento River State Park, and Colusa State Recreation Area managed by the California Department of Parks and Recreation; 14 ac (6 ha) is Cachil Dehe Band of the Wintun Indian tribal land; and 10,203 ac (4,129 ha), or 12 percent, are in Federal ownership located on the Sacramento River National Wildlife Refuge (NWR) managed by the U.S. Fish and Wildlife Service. State and county road crossings account for less than 1 percent of total proposed unit CA–2 ownership. This site has been a major nesting area for the species in the recent past. It is an important area to maintain for occupancy during species recovery.

Unit 3: CA–3 Sutter Bypass; Sutter County

Proposed critical habitat unit CA–3 is 1,090 ac (441 ha) in extent. It is a 7-mi (11-km)-long continuous segment of the Sutter Bypass starting upstream at a point on the Sutter Bypass 8 mi (13 km) west of Yuba City in Sutter County, California, primarily on the Sutter NWR. Approximately 524 ac (212 ha), or 48 percent, of proposed unit CA–3 are privately owned, and 566 ac (229 ha), or 52 percent, are in Federal ownership located on the Sutter NWR managed by the U.S. Fish and Wildlife Service. The site has recently been one of the most regularly occupied sites in the Sacramento Valley and provides a movement corridor between larger habitat patches.

Unit 4: CA–4 South Fork Kern River Valley; Kern County

Proposed critical habitat unit CA–4 is 2,862 ac (1,158 ha) in extent. It is a 8-mi (13-km)-long continuous segment of the South Fork Kern River from west of the town of Onyx downstream to Lake Isabella, and includes the upper 0.6 mi (1.0 km) of Lake Isabella in Kern County, California. Approximately 1,644 ac (665 ha), or 57 percent, of proposed Unit CA–4 are privately owned, and 1,218 ac (493 ha), or 43 percent, are in Federal ownership located on the Sequoia National Forest managed by the USFS. Numbers of breeding western yellow-billed cuckoos have been stable at this site. The site provides a stopover area or movement corridor between western yellow-billed cuckoos breeding on the Colorado River and the Sacramento River.

Unit 5: CA–5 Owens River; Inyo County

Proposed critical habitat unit CA–5 is 1,598 ac (647 ha) in extent. It is a 26-mi (42-km)-long continuous segment of the Owens River from Steward Lane, located 3 mi (5 km) southeast of the town of Big Pine, south to a point on the Owens River 4 mi (7 km) southeast of the town of Independence, within Inyo County, California. Approximately 1,597 ac (647 ha) are owned and managed by the Los Angeles Department of Water and Power (LADWP), and 1 ac (less than 1 ha) is in Federal ownership managed by BLM. This site provides nesting habitat for multiple pairs of western yellow-billed cuckoos. The site also provides a movement corridor to habitat farther north.

Unit 6: CA–6 Prado Flood Control Basin; Riverside County

Proposed critical habitat unit CA–6, the Prado Flood Control Basin, is 4,406 ac (1,784 ha). It is located in Riverside County, approximately 4 mi (7 km) west

of the city of Corona, Riverside County, California. The Prado Basin is a wetland and riparian complex that is formed by the impoundment of the Santa Ana River behind Prado Flood Control Dam (Prado Dam). Chino Creek, Mill (Cucamonga) Creek, and Temescal Wash are tributaries to the Santa Ana River that meet within Prado Basin. The dam is operated primarily for flood control. The Prado Basin is not permanently inundated. Instead, water is only temporarily impounded behind the dam, leaving much of Prado Basin's area open most of the time, which has allowed riparian vegetation to grow over much of the area. The Santa Ana River forms a 4-mi (6-km)-long continuous segment of riparian habitat. Approximately 1,300 ac (526 ha), or 30 percent, are in Federal ownership managed by the U.S. Army Corps of Engineers, and 3,106 ac (1,257 ha), or 70 percent, of proposed unit CA–6 are owned and managed by the Orange County Water District (OCWD), or is privately owned. The site provides a movement corridor between larger habitat patches. Tamarisk and giant reed (*Arundo donax*), nonnative species that reduce the quality of the habitat, are a major component at this site. The site is important to the conservation of the species because it is the largest remaining block of riparian habitat in this region into which a recovering population can expand and the only remaining site in southwestern California where the species has recently nested.

California–Arizona (2 Units)

Unit 7: CA/AZ–1 Colorado River 1; Imperial, Riverside, and San Bernardino Counties, California; Yuma and La Paz Counties, Arizona

Proposed critical habitat unit CA/AZ–1 is 78,961 ac (31,954 ha) in extent. It is a 139-mi (224-km)-long continuous segment of the Colorado River from 2 mi (3 km) south of the town of Earp in La Paz County, Arizona, south to the Mexican border in Imperial County, California. This segment passes through Riverside and San Bernardino Counties in California, and Yuma County in Arizona. Approximately 19,713 ac (7,978 ha), or 25 percent, of proposed Unit CA–AZ–1 are privately owned; 22,485 ac (9,099 ha), or 28 percent, are Tribal lands located on the Colorado River Indian Reservation; 4,187 ac (1,695 ha), or 5 percent, are in State ownership located on the Picacho State Recreation Area managed by the California Department of Parks and Recreation and Mittry Lake Wildlife Area managed by Arizona Game and Fish Department; and 32,576 ac (13,183 ha), or 41 percent, are in Federal ownership located on Cibola NWR and Imperial NWR managed by the U.S. Fish and Wildlife Service. The site has a small existing number of breeding western yellow-billed cuckoos, but has great potential for riparian habitat restoration, which is currently being implemented. Western yellow-billed cuckoos are colonizing these restoration sites as soon as they provide suitable habitat. It provides a movement corridor to habitat patches farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 8: CA/AZ–2 Colorado River 2; San Bernardino County, California; Mojave County, Arizona

Proposed critical habitat unit CA/AZ–2 is 23,452 ac (9,491 ha) in extent. It is a 23-mi (37-km)-long continuous segment of the Colorado River between the Interstate 40 Bridge, including Topock Marsh in San Bernardino County, California, and upstream to the Arizona-Nevada border in Mojave County, Arizona. Approximately 3,532 ac (1,429 ha), or 15 percent, of proposed Unit CA/AZ–2 are privately owned; 4,730 ac (1,914 ha), or 20 percent, are Tribal lands located on the Fort Mojave Indian Reservation; 1 ac (less than 1 ha), or less than 1 percent, is owned by State governments; and 15,189 ac (6,147 ha), or 65 percent, are in Federal ownership located on the Havasu NWR managed by the U.S. Fish and Wildlife Service. The site has a small existing number of western yellow-billed cuckoos, and has great potential for riparian habitat restoration, which is currently being implemented. It also provides a movement corridor to habitat patches farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major habitat component of this unit.

Arizona (37 Units)

Unit 9: AZ–1 Bill Williams River; Mojave and La Paz Counties

Proposed critical habitat unit AZ–1 is 3,390 ac (1,372 ha) in extent and is a 11-mi (18-km)-long continuous segment of the Bill Williams River, a tributary to the Colorado River, from the upstream end of Lake Havasu upstream to Castaneda Wash in Mojave and La Paz Counties, Arizona. Approximately 750 ac (304 ha), or 22 percent, of proposed unit AZ–1 are privately owned, and 2,640 ac (1,068 ha), or 78 percent, are in Federal ownership located on the Bill Williams River NWR managed by the U.S. Fish and Wildlife Service. This site is important for breeding western yellow-billed cuckoos as one of the largest and most stable breeding areas over the past 40 years. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 10: AZ–2 Alamo Lake; Mojave and La Paz Counties

Proposed critical habitat unit AZ–2 totals 2,794 ac (1,131 ha) in extent and is 9 mi (15 km) of continuous stream made up of a 6-mi (10-km)-long continuous segment of the Santa Maria River and a 3-mi (5-km)-long continuous segment of the Big Sandy River that feeds into the Santa Maria River above Alamo Lake State Park in Mojave and La Paz Counties, Arizona. Approximately 954 ac (386 ha), or 34 percent, of proposed unit AZ–2 are privately owned, and 1,840 ac (745 ha), or 66 percent, are in Federal ownership managed by BLM. No paved roads or road crossings occur within this proposed unit. This is a regular nesting area for western yellow-billed cuckoos. The site provides a movement corridor to habitat sites farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 11: AZ–3 Lake Mead; Mohave County

Proposed critical habitat unit AZ–3 is 6,734 ac (2,725 ha) in extent and is a 15-mi (24-km)-long continuous segment of the Colorado River between the upstream end of Lake Mead and the Kingman Wash area in Mohave County, Arizona. All of proposed unit AZ–3 is in Federal ownership located on the Lake Mead National Recreation Area managed by the NPS. No State or County road crossings occur with this proposed unit. This site consistently has breeding western yellow-billed cuckoos. The site also provides a movement corridor to breeding sites to the north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 12: AZ–4 Lower Gila River; Yuma County

Proposed critical habitat unit AZ–4 is 12,047 ac (4,875 ha) in extent and is a 22-mi (35-km)-long continuous segment of the lower Gila River from the vicinity of the Town of Ligurta to upstream of the confluence with Mohawk Wash, and including Quigley Pond Wildlife Management Area in Yuma County, Arizona. Approximately 3,548 ac (1,436 ha), or 29 percent, of proposed unit AZ–4 are privately owned; 1,086 ac (440 ha), or 9 percent, are in State ownership and

managed by the Arizona State Lands Department; and 7,413 ac (3,000 ha), or 62 percent, are in Federal ownership managed by BLM. Several sites in this unit have consistently had breeding western yellow-billed cuckoos. The site provides stopover locations for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 13: AZ–5 Upper Santa Maria River; Yavapai County

Proposed critical habitat unit AZ–5 is 1,636 ac (662 ha) in extent and is a 15-mi (24-km)-long continuous segment of the upper Santa Maria River from 1 mi (2 km) west of State Highway 93 upstream to near State Highway 96 in Yavapai County, Arizona. Approximately 727 ac (294 ha), or 44 percent, of proposed unit AZ–5 are privately owned; 336 ac (136 ha), or 21 percent, are in State ownership and managed by the Arizona State Lands Department; and 573 ac (232 ha), or 35 percent, are in Federal ownership managed by BLM. The site has been occupied consistently by western yellow-billed cuckoos during the breeding season. The site also provides a migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 14: AZ–6 Hassayampa River; Yavapai and Maricopa Counties

Proposed critical habitat unit AZ–6 is 2,838 ac (1,148 ha) in extent and is a 13-mi (21-km)-long continuous segment of the Hassayampa River in the vicinity of Wickenburg in Yavapai and Maricopa Counties, Arizona. Approximately 2,237 ac (905 ha), or 79 percent, of proposed unit AZ–6 are privately owned; 10 ac (4 ha), or less than 1 percent, are in State ownership and managed by Arizona State Lands Department; and 591 ac (239 ha), or 21 percent, are in Federal ownership managed by BLM. This site consistently has breeding western yellow-billed cuckoos. The site also provides a movement corridor for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a component of habitat in this unit.

Unit 15: AZ–7 Gila and Salt Rivers; Maricopa County

Proposed critical habitat unit AZ–7 is 17,585 ac (7,116 ha) in extent and is a 26-mi (42-km)-long continuous segment of the Gila and Salt Rivers west of Phoenix in Maricopa County, Arizona. Approximately 9,356 ac (3,786 ha), or 53 percent, of proposed unit AZ–7 are privately owned; 868 ac (351 ha), or 5 percent, are Tribal lands located on the Gila River Indian Reservation; 2,642 ac (1,069 ha), or 15 percent, are in State ownership and managed by the Arizona State Lands Department; and 4,719 ac (1,910 ha), or 27 percent, are in Federal ownership managed by BLM. This site has consistently been used by nesting western yellow-billed cuckoos. The site also provides migrant stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat value, is a major component of habitat in this unit.

Unit 16: AZ–8 Agua Fria River; Yavapai County

Proposed critical habitat unit AZ–8 is 3,337 ac (1,350 ha) in extent and is made up of a 17-mi (27-km)-long continuous segment of the Agua Fria River (called Ash Creek above the confluence with Sycamore Creek), which is joined by a 5-mi (8-km)-long continuous segment of a tributary called Sycamore Creek. Together they form a total of 22 mi (35.4 km) of continuous segments located approximately 2.5 mi (4.0 km) east of Cordes Lakes in Yavapai County, Arizona. Approximately 1,300 ac (526 ha), or 39 percent, of proposed unit AZ–8 are privately owned; 235 ac (95 ha), or 7 percent, are in State ownership and managed by Arizona State Lands Department; and 1,802 ac (729 ha), or 54 percent, are in Federal ownership managed by BLM. This site has consistently been used by numerous breeding pairs of western yellow-billed cuckoos. The site also provides migration stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 17: AZ–9 Upper Verde River; Yavapai County

Proposed critical habitat unit AZ–9 is 4,531 ac (1,834 ha) in extent and is a 45-mi (72-km)-long continuous segment of the upper Verde River from the confluence with Granite Creek downstream to Oak Creek below the Town of Cottonwood in Yavapai County, Arizona. Approximately 1,538 ac (622 ha), or 34 percent, of proposed unit AZ–9 are privately owned; 776 ac (314 ha), or 17 percent, are in State ownership and managed by the Arizona State Lands Department; and 2,217 ac (897 ha), or 49 percent, are in Federal ownership, which includes lands primarily in the Prescott National Forest managed by the USFS and a small portion in Tuzigoot National Monument managed by the NPS. This site is a consistent breeding location for numerous pairs of western yellow-billed cuckoos. The site also provides a movement corridor and migration stopover habitat for western yellow-billed cuckoos moving farther north to breed. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 18: AZ–10 Oak Creek; Yavapai and Coconino Counties

Proposed critical habitat unit AZ–10 is 1,323 ac (535 ha) in extent and is a 21-mi (34-km)-long continuous segment of Oak Creek from the vicinity of the Town of Cornville at Spring Creek in Yavapai County upstream to State Highway 179 Bridge within the City of Sedona in Coconino County, Arizona. Approximately 730 ac (295 ha), or 55 percent, of proposed unit AZ–10 are privately owned; 160 ac (65 ha), or 12 percent, are in State ownership located in Red Rock State Park managed by Arizona State Parks; and 433 ac (175 ha), or 33 percent, are in Federal ownership located on the Coconino National Forest managed by the USFS. Western yellow-billed cuckoos have consistently bred in this unit. The site also provides a movement corridor and migratory stopover habitat for western yellow-billed cuckoos moving farther to the north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 19: AZ–11 Beaver Creek and Tributaries; Yavapai County

Proposed critical habitat unit AZ–11 is 2,082 ac (842 ha) in extent and is a 23-mi (37-km)-long continuous segment of Beaver Creek from the confluence with the Verde River near Camp Verde upstream to above the Town of Rimrock in Yavapai County, Arizona. Approximately 588 ac (238 ha), or 28 percent, of proposed unit AZ–11 are privately owned; 3 ac (1 ha), or less than 1 percent, are Tribal lands located on the Camp Verde Indian Reservation; and 1,491 ac (603 ha), or 72 percent, are in Federal ownership, which includes lands in Montezuma Castle National Monument managed by the NPS and Coconino National Forest managed by the USFS. Numerous western yellow-billed cuckoos have consistently used this site during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the

habitat's value, is a minor to major component of habitat in this unit.

Unit 20: AZ–12 Lower Verde River and West Clear Creek; Yavapai County

Proposed critical habitat unit AZ–12 is 2,053 ac (831 ha) in extent and is made up of a 13-mi (21-km)-long segment of the lower Verde River, which is joined by a 5-mi (8-km)-long continuous segment of a tributary called West Clear Creek. Together they form an 18-mi (29-km)-long continuous segment located in the vicinity of Camp Verde Indian Reservation. Approximately 1,532 ac (620 ha), or 75 percent, of proposed unit AZ–12 are privately owned; 43 ac (17 ha), or 2 percent, are Tribal lands located on the Camp Verde Indian Reservation; 31 ac (13 ha), or 2 percent, are in State ownership and managed by the State of Arizona; and 447 ac (181 ha), or 22 percent, are in Federal ownership located on the Prescott National Forest managed by the USFS. Numerous western yellow-billed cuckoos have consistently used this site during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 21: AZ–13 Horseshoe Dam; Yavapai County

Proposed critical habitat unit AZ–13 is 626 ac (253 ha) in extent and is a 3-mi (5-km)-long continuous segment of the Verde River immediately upstream of Horseshoe Dam in Yavapai County, Arizona. The entire unit is in Federal ownership located on the Tonto National Forest managed by the USFS. No State and County roads or road crossings occur within this proposed unit. Western yellow-billed cuckoos have consistently bred at this site. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 22: AZ–14 Tonto Creek; Gila County

Proposed critical habitat unit AZ–14 is 3,670 ac (1,485 ha) in extent and is made up of a 6-mi (10-km)-long continuous segment of Tonto Creek upstream from the lakebed at Theodore Roosevelt Lake in Gila County, Arizona. Approximately 1,141 ac (462 ha), or 31 percent, of proposed unit AZ–14 are privately owned, and 2,529 ac (1,023 ha), or 69 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. Numerous western yellow-billed cuckoos have consistently bred in this unit. The site also provides a movement corridor and migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 23: AZ–15 Pinal Creek; Gila County

Proposed critical habitat unit AZ–15 is 419 ac (170 ha) in extent and is a 3-mi (5-km)-long continuous segment of Pinal Creek location north of the Town of Globe in Gila County, Arizona. Approximately 389 ac (157 ha), or 93 percent, of proposed unit AZ–15 are privately owned, and 30 ac (12 ha), or 7 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. This site has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 24: AZ–16 Bonita Creek; Graham County

Proposed critical habitat unit AZ–16 is 929 ac (376 ha) in extent and is a 6-mi (10-km)-long continuous segment of the Gila River that includes a continuous segment of a tributary called Bonita Creek located northeast of the Town of Thatcher in Graham County, Arizona. Approximately 101 ac (41 ha), or 11 percent, of proposed unit AZ–16 are privately owned, and 828 ac (335 ha), or 89 percent, are in Federal ownership, which includes lands in the Gila Box Riparian National Conservation Area managed by BLM. This site has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 25: AZ–17 San Francisco River 1; Greenlee County

Proposed critical habitat unit AZ–17 is a 1,327 ac (537 ha) in extent and is a 4-mi (6-km)-long continuous segment of the San Francisco River that includes a continuous segment of a tributary called Dix Creek located approximately 6 mi (9.6 km) west of the border with New Mexico in Greenlee County, Arizona. Approximately 135 ac (55 ha), or 10 percent, of proposed unit AZ–17 are privately owned, and 1,192 ac (482 ha), or 90 percent, are in Federal ownership located on the Apache-Sitgreaves National Forest managed by the USFS. No State or County road crossings occur within this proposed unit. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 26: AZ–18 Upper San Pedro River; Cochise County

Proposed critical habitat unit AZ–18 is 21,786 ac (8,816 ha) in extent and is a 83-mi (133-km)-long segment of the Upper San Pedro River from the border with Mexico north to the vicinity of the Town of Saint David in Cochise County, Arizona. Approximately 9,145 ac (3,701 ha), or 42 percent, of proposed unit AZ–18 are privately owned; 1,292 ac (523 ha), or 6 percent, are in State ownership and managed by the Arizona State Lands Department; and 11,349 ac (4,593 ha), or 52 percent, are in Federal ownership located on the San Pedro Riparian National Conservation Area managed by BLM. This unit has one of the largest remaining breeding groups of the western yellow-billed cuckoo and is consistently occupied by a large number of pairs. The site also provides a movement corridor for Western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 27: AZ–19 Hooker Hot Springs; Cochise County

Proposed critical habitat unit AZ–19 is 375 ac (152 ha) in extent and is a 3-mi (5-km)-long forked segment of a tributary to the Lower San Pedro River at Hooker Hot Springs in Cochise County, Arizona. Approximately 208 ac (84 ha), or 55 percent, of proposed unit AZ–19 are privately owned; 4 ac (2 ha), or 1 percent, are in State ownership and managed by the Arizona State Lands Department; and 163 ac (66 ha), or 43 percent, are in Federal ownership managed by BLM. No State or County road crossings occur within this proposed unit. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a migratory stopover location. Tamarisk, a nonnative species that reduces the

habitat's value, is a minor to major component of habitat in this unit.

Unit 28: AZ–20 Lower San Pedro River and Gila River; Cochise, Pima, and Pinal Counties

Proposed critical habitat unit AZ–20 is 23,399 ac (9,469 ha) in extent and is a 59-mi (95-km)-long segment of the Lower San Pedro River from above the Town of Mammoth in Pima County downstream to join the Gila River, where it continues downstream to below the Town of Kearny in Pinal County, Arizona. Approximately 17,431 ac (7,054 ha), or 75 percent, of proposed unit AZ–20 are privately owned; 729 ac (295 ha), or 3 percent, are Tribal lands located on the San Carlos Indian Reservation; 2,282 ac (923 ha), or 10 percent, are in State ownership and managed by the Arizona State Lands Department; and 2,957 ac (1,197 ha), or 13 percent, are in Federal ownership managed by BLM. This is an important breeding area for western yellow-billed cuckoos and is consistently occupied by a number of pairs during the breeding season. The site also provides a movement corridor and migratory stopover location for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 29: AZ–21 Picacho Reservoir—Flood Control Basin; Pinal County

Proposed critical habitat unit AZ–21 is 2,789 ac (1,129 ha) in extent and is a 2-mi (3-km)-long reservoir located 11 mi (18 km) south of Coolidge in Pinal County, Arizona. Approximately 1,513 ac (612 ha), or 54 percent, of proposed unit AZ–21 are privately owned; 941 ac (381 ha), or 34 percent, are in State ownership and managed by the Arizona State Lands Department; and 335 ac (136 ha), or 12 percent, are in Federal ownership managed by BLM. This unit is consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 30: AZ–22 Peritas Wash; Pima County

Proposed critical habitat unit AZ–22 is 894 ac (362 ha) in extent and is a 4-mi (6-km)-long continuous segment of Peritas Wash located approximately 20 mi (30 km) west of the Town of Green Valley in Pima County, Arizona. Approximately 724 ac (293 ha), or 81 percent, of proposed unit AZ–22 are State-owned, and 170 ac (69 ha), or 19 percent, are in Federal ownership located on the Buenos Aires NWR managed by the U.S. Fish and Wildlife Service. No State and County roads occur within this proposed unit. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 31: AZ–23 Arivaca Wash and San Luis Wash; Pima County

Proposed critical habitat unit AZ–23 is 5,765 ac (2,333 ha) in extent and is made up of two washes that join to form a 17-mi (27-km)-long continuous segment that is comprised of 9 mi (15 km) of Arivaca Wash and 8 mi (13 km) of San Luis Wash. The unit is located about 10 mi (16 km) north of the border of Mexico near the Town of Arivaca in Pima County, Arizona. Approximately 1,014 ac (410 ha), or 18 percent, of proposed unit AZ–23 are privately owned; 89 ac (36 ha), or 2 percent, are in State ownership and managed by the Arizona State Lands Department; and 4,662 ac (1,887 ha), or 81 percent, are in Federal ownership located on the Buenos Aires NWR managed by the U.S. Fish and Wildlife Service. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 32: AZ–24 Sonoita Creek; Santa Cruz County

Proposed critical habitat unit AZ–24 is 1,610 ac (652 ha) in extent and is a 12-mi (19-km)-long segment of Sonoita Creek from the Town of Patagonia downstream to a point on the creek approximately 4 mi (6 km) east of the Town of Rio Rico in Santa Cruz County, Arizona. Approximately 835 ac (338 ha), or 52 percent, of proposed unit AZ–24 are privately owned, and 775 ac (314 ha), or 48 percent, are in State ownership located on Patagonia Lake State Park managed by the Arizona State Parks. This is a consistent site for a number of pairs of western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 33: AZ–25 Upper Cienega Creek; Pima County

Proposed critical habitat unit AZ–25 is 5,204 ac (2,106 ha) in extent and is made up of two washes that join to form a 14-mi (23-km)-long continuous segment and is comprised of 10 mi (16 km) of Cienega Creek and 4 mi (7 km) of Empire Gulch located about 8 mi (12 km) northeast of the Town of Sonoita in Pima County, Arizona. Approximately 574 ac (232 ha), or 11 percent, are in State ownership and managed by the Arizona State Lands Department, and 4,630 ac (1,874 ha), or 89 percent, are in Federal ownership located on the Coronado National Forest managed by the USFS. No State and County roads occur within this proposed unit. This unit is consistently occupied by a number of pairs of western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for western yellow-billed cuckoos nesting farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 34: AZ–26 Santa Cruz River; Santa Cruz County

Proposed critical habitat unit AZ–26 is 3,689 ac (1,493 ha) in extent and is a 5-mi (8-km)-long segment of the Santa Cruz River in the vicinity of the Town of Tubac in Santa Cruz County, Arizona. This proposed unit AZ–26 is entirely privately owned. This unit has consistently been occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for western yellow-billed cuckoos nesting farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 35: AZ–27 Black Draw; Cochise County

Proposed critical habitat unit AZ–27 is 890 ac (360 ha) in extent and is a 4-mi (6-km)-long segment of Black Draw starting on the border with Mexico and located approximately 17 mi (28 km) east of the City of Douglas in Cochise County, Arizona. Approximately 440 ac (178 ha), or 49 percent, of proposed unit AZ–27 are privately owned; 45 ac (18 ha), or 5 percent, are in State ownership and managed by the Arizona State Lands Department; and 405 ac (164 ha), or 46 percent, are in Federal ownership, which includes lands in the San Bernardino NWR managed by the U.S. Fish and Wildlife Service. No State or County road crossings occur within this

proposed unit. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a migratory stopover area. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 36: AZ–28 Gila River 1; Graham County

Proposed critical habitat unit AZ–28 is 20,726 ac (8,388 ha) in extent and is a 66-mi (106-km)-long segment of the Gila River from 12 mi (19 km) upstream from Safford and downstream to San Carlos Reservoir. Approximately 9,547 ac (3,864 ha), or 46 percent, of proposed unit AZ–28 are privately owned; 10,183 ac (4,121 ha), or 49 percent, are Tribal lands located on the San Carlos Indian Reservation; 216 ac (87 ha), or 1 percent, are in State ownership and managed by the Arizona State Lands Department; and 780 ac (316 ha), or 4 percent, are in Federal ownership managed by BLM. No State or County road crossings occur within this proposed unit. This unit is consistently occupied by a number of pairs of western yellow-billed cuckoos during the breeding season. The site also provides a migration stopover and movement corridor habitat. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 37: AZ–29 Salt River; Gila County

Proposed critical habitat unit AZ–29 is 2,590 ac (1,048 ha) in extent and is a 5-mi (8-km)-long continuous segment of the Salt River upstream from the lakebed at Theodore Roosevelt Lake in Gila County, Arizona. Approximately 121 ac (49 ha), or 5 percent, of proposed unit AZ–29 are privately owned, and 2,469 ac (999 ha), or 95 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 38: AZ–30 Lower Cienega Creek; Pima County

Proposed critical habitat unit AZ–30 is 2,360 ac (955 ha) in extent and is an 11-mi (18-km)-long continuous segment of Cienega Creek about 15 mi (24 km) southeast of Tucson in Pima County, Arizona. Approximately 1,601 ac (648 ha), or 68 percent, of proposed unit AZ–30 are privately owned, and 759 ac (307 ha), or 32 percent, are in State ownership and managed the Arizona State Lands Department. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 39: AZ–31 Blue River; Greenlee County

Proposed critical habitat unit AZ–31 is 1,025 ac (415 ha) in extent and is an 8-mi (13-km)-long continuous segment of the Blue River in Greenlee County, Arizona. The entire unit is in Federal ownership located on the Apache Sitgreaves National Forest managed by the USFS. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site provides a movement corridor. Tamarisk, a nonnative species that reduces the habitat's value, is a minor component of habitat in this unit.

Unit 40: AZ–32 Pinto Creek South; Gila County

Proposed critical habitat unit AZ–32 is 373 ac (151 ha) in extent and is a 4-mi (6-km)-long continuous segment of Pinto Creek in Gila County, Arizona. Approximately 5 ac (2 ha), or 1 percent, of proposed unit AZ–32 are privately owned, and 368 ac (149 ha), or 99 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. The site also provides migratory stopover habitat. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 41: AZ–33 Aravaipa Creek; Pima and Graham Counties

Proposed critical habitat unit AZ–33 is 1,209 ac (489 ha) in extent and is a 9-mi (15-km)-long continuous segment of Aravaipa Creek in Pima and Graham Counties, Arizona. Approximately 738 ac (299 ha), or 61 percent, of proposed unit AZ–33 are privately owned; 1 ac (less than 1 ha) is in State ownership and managed by the Arizona State Lands Department; and 470 ac (190 ha), or 39 percent, are in Federal ownership managed by BLM. This unit has consistently been occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 42: AZ–34 Lower Verde River; Maricopa County

Proposed critical habitat unit AZ–34 is 1,079 ac (437 ha) in extent and is a 6-mi (10-km)-long continuous segment of the Lower Verde River downstream from Bartlett Dam in Maricopa County, Arizona. Approximately 16 ac (6 ha), or 1 percent, of proposed unit AZ–34 are privately owned, and 1,063 ac (430 ha), or 99 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 43: AZ–35 Gila River 3; Graham and Greenlee Counties

Proposed critical habitat unit AZ–35 is 2,194 ac (888 ha) and 22 mi (34 km) in extent. It is a 12-mi (18-km)-long continuous segment of the Gila River, 9 mi (14 km) on Eagle Creek, and 1 mi (2 km) on the San Francisco River in Graham and Greenlee Counties, Arizona. Approximately 1,067 ac (432 ha), or 49 percent, of proposed unit AZ–35 are privately owned; 1 ac (less than 1 ha), or less than 1 percent, is in State ownership and managed by the Arizona State Lands Department; and 1,126 acres (456 ha), or 51 percent, are in Federal ownership located on the Gila Box Riparian National Conservation Area managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for migrating western yellow-billed cuckoos. Tamarisk, a nonnative species that reduces the habitat's value, is a minor component of habitat in this unit.

Unit 44: AZ–36 Pinto Creek North; Gila County

Proposed critical habitat unit AZ–36 is 427 ac (173 ha) in extent and is a 6-mi (10-km)-long continuous segment of Pinto Creek in Gila County, Arizona. Approximately 12 ac (5 ha), or 3 percent, of proposed unit AZ–36 are privately owned, and 415 ac (168 ha), or 97 percent, are in Federal ownership located on the Tonto National Forest managed by the USFS. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migration stopover habitat. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 45: AZ–37 Florida Wash; Pima County

Proposed critical habitat unit AZ–37 is 188 ac (76 ha) in extent and is a 4-mi (6-km)-long continuous segment of Florida Wash and tributaries in Pima County, Arizona. Approximately 43 ac (17 ha), or 23 percent, of proposed unit AZ–36 are privately owned; 32 ac (13 ha), or 17 percent, are in State ownership and managed by the Arizona State Lands Department; and 113 ac (46 ha), or 61 percent, are in Federal ownership managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site provides a movement corridor between larger habitat patches. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

New Mexico (8 Units)

Unit 46: NM–1 San Juan River 1; San Juan County

Proposed critical habitat unit NM–1 is 6,354 ac (2,571 ha) in extent and is a 35-mi (56-km)-long continuous segment of the San Juan River between just downstream of Fruitland to just downstream of Blanco in San Juan County, New Mexico. Approximately 4,456 ac (1,803 ha), or 70 percent, of proposed unit NM–1 are privately owned; 1,041 ac (421 ha), or 16 percent, are Tribal lands located on the Navajo Nation; 177 ac (72 ha), or 3 percent, are in State ownership and managed by the New Mexico State Lands Office; and 680 ac (275 ha), or 11 percent, are in Federal ownership managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos breeding farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 47: NM–3 San Francisco River 2; Catron County

Proposed critical habitat unit NM–3 is 2,039 ac (825 ha) in extent and is a 10-mi (16-km)-long continuous segment of the San Francisco River near the Town of Glenwood in Catron County, New Mexico. This segment includes 1.2 mi (2 km) up Whitewater Creek from the confluence of the San Francisco River near the Town of Glenwood. Approximately 1,291 ac (522 ha), or 63 percent, of proposed unit NM–3 are privately owned; 10 ac (4 ha), or less than 1 percent, are in State ownership and managed by the New Mexico State Lands Office; and 738 ac (299 ha), or 36 percent, are in Federal ownership located on the Gila National Forest managed by the USFS. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor component of habitat in this unit.

Unit 48: NM–4 Gila River 2; Grant and Hidalgo Counties

Proposed critical habitat unit NM–4 is 4,179 ac (1,691 ha) in extent and is a 24-mi (37-km)-long continuous segment of the Gila River from 10 mi (16 km) downstream from the town of Cliff to 10 mi (16 km) upstream of the town of Gila in Grant County, New Mexico. Approximately 3,003 ac (1,215 ha), or 72 percent, of proposed unit NM–4 are privately owned; 201 ac (81 ha), or 5 percent, is in State ownership and managed by the New Mexico State Lands Office; and 975 ac (395 ha), or 23 percent, are in Federal ownership managed by BLM. This unit is consistently occupied by a large number of western yellow-billed cuckoos during the breeding season and is an important breeding location for the species. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 49: NM–5 Mimbres River; Grant County

Proposed critical habitat unit NM–5 is 260 ac (105 ha) in extent and is a 3-mi (5-km)-long continuous segment of the Mimbres River south of the town of Mimbres in Grant County, New Mexico. The entire proposed unit NM–5 is privately owned. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 50: NM–6 Upper Rio Grande 1; Rio Arriba County

Proposed critical habitat unit NM–6 is 1,830 ac (741 ha) in extent and is a 10-mi (16-km)-long continuous segment of the upper Rio Grande from the San Juan Pueblo to near Alcalde in Rio Arriba County, New Mexico. Approximately 517 ac (209 ha), or 28 percent, of proposed unit NM–6 are privately owned, and 1,313 ac (532 ha), or 72 percent, are Tribal lands located on the San Juan Pueblo. This site is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 51: NM–7 Middle Rio Grande 2; Santa Fe and Rio Arriba Counties

Proposed critical habitat unit NM–7 is 1,173 ac (475 ha) in extent and is a 6-mi (10-km)-long continuous segment of the Middle Rio Grande starting from the Highway 502 Bridge at the south end of the San Ildefonso Pueblo upstream to a point on the river in Rio Arriba County, New Mexico. The entire proposed unit NM–7 is Tribal lands located on the San Ildefonso Pueblo, Santa Clara Pueblo, and San Juan Pueblo. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 52: NM–8 Middle Rio Grande 1; Sierra, Socorro, Valencia, Bernalillo, and Sandoval Counties

Proposed critical habitat unit NM–8 is 61,959 ac (25,074 ha) in extent and is an approximate 170-mi (273-km)-long continuous segment of the lower Rio Grande from Elephant Butte Reservoir in Sierra County upstream through Socorro, Valencia, and Bernalillo Counties to below Cochiti Dam in Cochiti Pueblo in Sandoval County, New Mexico. Approximately 31,953 ac (12,931 ha), or 52 percent, of proposed unit NM–8 are privately owned; 938 ac (380 ha), or 2 percent, are in State ownership, including lands managed by the New Mexico State Lands Office; 9,509 ac (3,848 ha), or 15 percent, are Tribal lands located on Isleta Pueblo, Sandia Pueblo, San Felipe Pueblo, Santa Ana Pueblo, Santa Domingo Pueblo, and Cochiti Pueblo; and 19,559 ac (7,915 ha), or 32 percent, are in Federal ownership located on Bosque del Apache NWR and Sevilleta NWR managed by the U.S. Fish and Wildlife Service, and lands owned and managed by BLM and Reclamation down to river-mile 54. This unit is consistently occupied by a large number of breeding western yellow-billed cuckoos and currently is the largest breeding group of the species north of Mexico. The site also provides a movement corridor for

western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit. We are seeking information on the appropriateness of including areas down to river-mile 42 as critical habitat for the western yellow-billed cuckoo (see Information Requested section).

Unit 53: NM–9 Upper Gila River; Hidalgo and Grant Counties

Proposed critical habitat unit NM–9 is 4,614 ac (1,867 ha) in extent and is a 30-mi (48-mi)-long continuous segment of the Gila River from the Arizona-New Mexico border 5 mi (8 km) downstream from Virden in Hidalgo County upstream to 8 mi (13 km) upstream from Red Rock in Grant County, New Mexico. Approximately 3,207 ac (1,298 ha), or 69 percent, of proposed unit NM–9 are privately owned; 423 ac (171 ha), or 9 percent, are in State ownership and managed by the New Mexico State Lands Office; and 984 ac (398 ha), or 21 percent, are in Federal ownership, which includes lands managed by BLM and lands located on the Gila National Forest managed by the USFS. This site is consistently occupied by numerous pairs of western yellow-billed cuckoos during the breeding season. The site provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Colorado (7 Units)

Unit 54: CO–1 Yampa River; Moffat and Routt Counties

Proposed critical habitat unit CO–1 is 6,938 ac (2,808 ha) in extent and is a 20-mi (32-km)-long continuous segment of the Yampa River from near the Town of Craig in Moffat County to near the Town of Hayden in Routt County, Colorado. Approximately 5,739 ac (2,322 ha), or 83 percent, of proposed unit CO–1 are privately owned, and 1,199 ac (485 ha), or 17 percent, are located on Yampa River State Wildlife Area managed by the Colorado Parks and Wildlife. This site has regularly been occupied by western yellow-billed cuckoos during the breeding season. This high-elevation site is near the current northern limit of the current breeding range of the species.

Unit 55: CO–2 Colorado River 3; Mesa County

Proposed critical habitat unit CO–2 is 4,002 ac (1,620 ha) in extent and is a 25-mi (40-km)-long continuous segment of the Colorado River in the vicinity of Grand Junction in Mesa County, Colorado. Approximately 3,553 ac (1,438 ha), or 89 percent, of proposed unit CO–2 are privately owned; 418 ac (169 ha), or 10 percent, are in State ownership located on the Corn Lake and Walker State Wildlife Areas managed by Colorado Parks and Wildlife; and 31 ac (13 ha), or 1 percent, are in Federal ownership managed by BLM. The Colorado River Wildlife Management Area managed by the U.S. Fish and Wildlife Service holds conservation easements on several private parcels in this unit. This unit has been occupied by western yellow-billed cuckoos. The site also provides a migration stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 56: CO–3 North Fork Gunnison River; Delta County

Proposed critical habitat unit CO–3 is 2,326 ac (941 ha) in extent and is a 16-mi (26-km)-long continuous segment of the North Fork of the Gunnison River between Hotchkiss and Paeonia in Delta County, Colorado. Approximately 2,211 ac (895 ha), or 95 percent, of proposed unit CO–3 are privately owned, and 115 ac (47 ha), or 5 percent, are in Federal ownership, which includes lands in the Hotchkiss National Fish Hatchery managed by the U.S. Fish and Wildlife Service and lands managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 57: CO–4 Uncompahgre River; Delta, Montrose, and Ouray Counties

Proposed critical habitat unit CO–4 is 4,506 ac (1,824 ha) in extent and is a 37-mi (60-km)-long continuous segment of the Uncompahgre River from the confluence with the Gunnison River in Delta County, upstream through Montrose to south of the Town of Colona in Ouray County, Colorado. Approximately 4,497 ac (1,820 ha), or nearly 100 percent, of proposed unit CO–4 are privately owned; 7 ac (3 ha), or less than 1 percent, are in State ownership located on the Billy Creek State Wildlife Area managed by Colorado Parks and Wildlife; and 2 ac (1 ha), or less than 1 percent, are in Federal ownership managed by BLM. This site has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor and migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 58: CO–5 Gunnison River; Gunnison County

Proposed critical habitat unit CO–5 is 937 ac (379 ha) in extent and is a 6-mi (10-km)-long continuous segment of the Gunnison River from Blue Mesa Reservoir upstream to Highway 50 in Gunnison County, Colorado. Approximately 921 ac (373 ha), or 98 percent, of proposed unit CO–5 are privately owned, and 16 ac (6 ha), or 2 percent, are in Federal ownership located on the Curecanti National Recreation Area managed by the NPS. This unit has been occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 59: CO–6 Upper Rio Grande 3; Alamosa and Rio Grande Counties

Proposed critical habitat unit CO–6 is 9,765 ac (3,952 ha) in extent and is a 45-mi (73-km)-long continuous segment of the Rio Grande from Alamosa in Alamosa County upstream to Alpine in Rio Grande County, Colorado. Approximately 9,751 ac (3,946 ha), or nearly 100 percent, of proposed unit CO–6 are privately owned, and 14 ac (6 ha), or less than 1 percent, are in Federal ownership managed by BLM. This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 60: CO–7 Conejos River; Conejos County

Proposed critical habitat unit CO–7 is 8,986 ac (3,637 ha) in extent and is a 62-mi (100-km)-long continuous segment of the Conejos River from the confluence with the Rio Grande upstream to Fox Creek in Conejos County, Colorado. Approximately 8,609 ac (3,484 ha), or 96 percent, of proposed unit CO–7 are privately owned; 47 ac (19 ha), or 1 percent, are in State ownership, which includes lands in the Sego Springs State Wildlife Area managed by Colorado Parks and Wildlife; and 330 ac (134 ha), or 4 percent, are in Federal ownership managed by BLM. This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Utah (8 Units)

Unit 61: UT–1 Green River 1; Uintah County

Proposed critical habitat unit UT–1 is 17,256 ac (6,983 ha) in extent and is a 38-mi (61-km)-long continuous segment of the Green River in the vicinity of Ouray in Uintah County, Utah. Approximately 1,296 ac (524 ha), or 8 percent, of proposed unit UT–1 are privately owned; 6,848 ac (2,772 ha), or 40 percent, are Tribal lands located on the Uintah and Ouray Indian Reservation; 4,411 ac (1,786 ha), or 26 percent, are in State-ownership managed by Utah Division of Forestry, Fire, and State Lands; and 4,701 ac (1,902 ha), or 27 percent, are in Federal ownership, which includes lands located on the Ouray NWR managed by the U.S. Fish and Wildlife Service and lands managed by BLM. This unit has consistently had western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for western yellow-billed cuckoos moving farther north.

Unit 62: UT–2 Pigeon Water Creek and Lake Fork River; Duchesne County

Proposed critical habitat unit UT–2 is 3,041 ac (1,231 ha) in extent and is a 9-mi (15-km)-long continuous segment of Lake Fork River located approximately 12 mi (19 km) west of the Town of Roosevelt in Duchesne County, Utah. Approximately 1,701 ac (688 ha), or 56 percent, of proposed unit UT–2 are privately owned, and 1,340 ac (543 ha), or 44 percent, are Tribal lands located on the Uintah and Ouray Indian Reservation. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 63: UT–3 Colorado River 4; Grand County, Utah and Mesa County, Colorado

Proposed critical habitat unit UT–3 is 579 ac (234 ha) in extent and is a 3-mi (5-km)-long continuous segment of the Colorado River that straddles the Utah-Colorado Border between Westwater in Grand County, Utah, to a point 2 mi (3 km) up the river in Mesa County, Colorado. Approximately 132 ac (53 ha), or 23 percent, of proposed unit UT–3 are privately owned; 238 ac (96 ha), or 39 percent, are in State ownership managed by the Utah Division of Forestry, Fire, and State Lands; and 209 ac (85 ha), or 36 percent, are in Federal ownership and managed by BLM. No paved roads or road crossings occur within this proposed unit. This unit has been occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 64: UT–4 Dolores River; Grand County

Proposed critical habitat unit UT–4 is 401 ac (162 ha) in extent and is a 2-mi (3-km)-long continuous segment of the lower Dolores River near the confluence with the Colorado River in Grand County, Utah. Approximately 136 ac (55 ha), or 34 percent, of proposed unit UT–4 are privately owned; 150 ac (61 ha), or 37 percent, are in State ownership managed by the Utah Division of Forestry, Fire, and State Lands; and 115 ac (47 ha), or 29 percent, are in Federal ownership managed by BLM. No road crossings occur within this proposed unit. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 65: UT–5 Green River 2; San Juan and Wayne Counties

Proposed critical habitat unit UT–5 is 4,657 ac (1,885 ha) in extent and is a 41-mi (66-km)-long continuous segment of the Green River upstream from the confluence with the Colorado River in both San Juan and Wayne Counties, Utah. The entire unit is in Federal ownership located on the Canyonlands National Park, managed by the NPS. No road crossings occur within this proposed unit. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Unit 66: UT–6 San Juan River 2; San Juan County

Proposed critical habitat unit UT–6 is 2,198 ac (889 ha) in extent and is a 5-mi (8-km)-long continuous segment of the San Juan River at the upper extent of Lake Powell in San Juan County, Utah. The entire unit is in Federal ownership located on the Glen Canyon National Recreation Area managed by the NPS. No paved roads or road crossings occur within this proposed unit. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in this unit.

Unit 67: UT–7 San Juan River 3; San Juan County

Proposed critical habitat unit UT–7 is 9,692 ac (3,922 ha) in extent and is a 33-mi (53-km)-long continuous segment of the San Juan River from near Bluff and upstream to a point on the river in San Juan County, Utah. Approximately 299 ac (121 ha), or 3 percent, of proposed unit UT–7 are privately owned; 7,766 ac (3,144 ha), or 80 percent, are Tribal lands located on the Navajo Nation; 38 ac (15 ha), or less than 1 percent, are in State ownership managed by Utah Division of Forestry, Fire, and State Lands; and 1,589 ac (643 ha), or 16 percent, are in Federal ownership managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in the southwest.

Unit 68: UT–8 Virgin River 2; Washington County

Proposed critical habitat unit UT–8 is 1,390 ac (562 ha) in extent and is a 13-mi (21-km)-long continuous segment of the Virgin River in the vicinity of St. George in Washington County, Utah. Approximately 1,352 ac (547 ha), or 97 percent, of proposed unit UT–8 are privately owned; 6 ac (2 ha), or less than 1 percent, are in State ownership managed by Utah Division of Forestry, Fire, and State Lands; and 32 ac (13 ha), or 2 percent, are in Federal ownership managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a minor to major component of habitat in the southwest.

Idaho (4 Units)

Unit 69: ID–1 Snake River 1; Bannock and Bingham Counties

Proposed critical habitat unit ID–1 is 9,294 ac (3,761 ha) in extent and is a 22-mi (35-km)-long continuous segment of the Snake River from the upstream end of the American Falls Reservoir in Bannock County upstream to a point on the Snake River approximately 2 mi (3 km) west of the Town of Blackfoot in Bingham County, Idaho. Approximately

3,343 ac (1,353 ha), or 36 percent, of proposed unit ID–1 are privately owned; 2 (1 ha), or less then 1 percent, are in State ownership managed by the Idaho Department of Lands; 2,257 ac (913 ha), or 24 percent, are Tribal lands located on the Fort Hall Indian Reservation; and 3,692 ac (1,494 ha), or 40 percent, are in Federal ownership (BIA 117 ac (47 ha), BLM 3,260 ac (1,323 ha), and BOR 315 ac (127 ha)). This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range.

Unit 70: ID–2 Snake River 2; Bonneville, Madison, and Jefferson Counties

Proposed critical habitat unit ID–2 is 11,439 ac (4,629 ha) in extent and is a 40-mi (64-km)-long continuous segment of the Snake River from the bridge crossing on the Snake River 2 mi (3 km) east of the Town of Roberts in Madison County through Jefferson County and upstream to vicinity of mouth of Table Rock Canyon in Bonneville County, Idaho. Approximately 5,472 ac (2,214 ha), or 48 percent, of proposed unit ID–2 are privately owned; 106 ac (43 ha), or 1 percent, are in State ownership and managed by Idaho Department of Lands; and 5,861 ac (2.372 ha), or 51 percent, are in Federal ownership, which includes lands managed by BLM and lands located in the Caribou–Targhee National Forest managed by USFS. Portions of Unit 70 (and Unit 72) are within lands designated as the Snake River Area of Critical Environmental Concern (ACEC) by BLM and the Land and Water Conservation Fund (LWCF) program has purchased 32 properties in fee title and set aside approximately 42 conservation easements (22,400 ac (9,065 ha)) within the ACEC. The western yellow-billed cuckoo has been identified as a species of concern in the ACEC. State and County road crossings account for less than 1 percent of total ownership of this proposed unit. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range.

Unit 71: ID–3 Big Wood River; Blaine County

Proposed critical habitat unit ID–3 is 1,129 ac (457 ha) in extent and is a 7-mi (11-km)-long continuous segment of the Big Wood River downstream from Bellevue in Blaine County, Idaho. Approximately 956 ac (387 ha), or 85 percent, of proposed unit ID–3 are privately owned; 85 ac (34 ha), or 8 percent, are in State ownership and managed by Idaho Department of Lands; and 88 ac (36 ha), or 8 percent, are in Federal ownership managed by BLM. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range.

Unit 72: ID–4 Henry's Fork and Teton Rivers; Madison County

Proposed critical habitat unit ID–4 is 3,449 ac (1,396 ha) in extent and is a 6-mi (10-km)-long continuous segment of the Henry's Fork of the Snake River in Madison County from just upstream of the confluence with the Snake River to a point on the river approximately 2 km (1 mi) upstream of the Madison County line in Fremont County, Idaho. Approximately 2,712 ac (1,098 ha), or 79 percent, of proposed unit ID–4 are privately owned; 341 ac (138 ha), or 10 percent, are in State ownership and managed by the Idaho Department of Lands; and 396 ac (160 ha), or 11 percent, are in Federal ownership managed by BLM (see discussion in Unit 70 of conservation activities within this unit). This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range.

Nevada (3 Units)

Unit 73: NV–1 Upper Muddy River; Clark County

Proposed critical habitat unit NV–1 is 1,472 ac (596 ha) in extent and is a 5-mi (8-km)-long continuous segment of the Muddy River from upstream of the confluence with the Virgin River at Lake Mead up to the vicinity of the Moapa Indian Reservation in Clark County, Nevada. Approximately 157 ac (64 ha), or 11 percent, of proposed unit NV–1 are privately owned, and 1,315 ac (532 ha), or 89 percent, are in Federal ownership located at Lake Mead managed by Reclamation and the Moapa Valley NWR managed by the U.S. Fish and Wildlife Service. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 74: NV–3 Lower Muddy River; Clark County

Proposed critical habitat unit NV–3 is 437 ac (177 km) in extent and is a 2-mi (3-km)-long continuous segment of the Lower Muddy River in Clark County, Nevada. The entire proposed unit is privately owned. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 75: NV–4 Carson River; Lyon County

Proposed critical habitat unit NV–4 is 4,348 ac (1,760 km) in extent and is a 12-mi (19-km)-long continuous segment of the Carson River in Lyon County, Nevada. Approximately 3,186 ac (1,289 ha), or 73 percent, of proposed unit NV–4 are privately owned; 13 ac (5 ha), or less than 1 percent, are in State ownership located on the Lahontan State Recreation Area and managed by the Nevada State Parks; and 1,149 ac (465 ha), or 26 percent, are in Federal ownership managed by BLM and Reclamation. This unit has consistently been occupied by western yellow-billed cuckoos during the breeding season.

Nevada-Arizona (1 Unit)

Unit 76: NV/AZ–1 Virgin River 1; Clark County, Nevada, and Mohave County, Arizona

Proposed critical habitat unit NV/AZ–1 is 11,266 ac (4,559 ha) in extent and is a 39-mi (63-km)-long continuous segment of the Virgin River from the upstream extent of Lake Mead in Clark County, Nevada, upstream to a point on the Virgin River downstream from Littlefield in Mohave County, Arizona. Approximately 4,077 ac (1,650 ha), or 36 percent, of proposed unit NV/AZ–1 are privately owned; 52 ac (21 ha), or less than 1 percent, are in State ownership and managed by the Arizona State Lands Department; and 7,137 ac (2,888 ha), or 63 percent, are in Federal ownership managed by BLM. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Wyoming (1 Unit)

Unit 77: WY–1 Green River 3; Sweetwater County

Proposed critical habitat unit WY–1 is 7,471 ac (3,023 ha) in extent and is a 28-mi (45-km)-long continuous segment of the Green River in the vicinity of

Seedskadee NWR in Sweetwater County, Wyoming. Approximately 1,137 ac (460 ha), or 15 percent, of proposed unit WY–1 are privately owned; 629 ac (255 ha), or 8 percent, are in State ownership and managed by Wyoming Office of State Lands and Investments; and 5,705 ac (2,309 ha), or 76 percent, are in Federal ownership located on the Seedskadee NWR managed by the U.S. Fish and Wildlife Service. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range.

Wyoming-Utah (1 Unit)

Unit 78: WY/UT–1 Henry's Fork of Green River; Uinta County, Wyoming, and Summit County, Utah

Proposed critical habitat unit WY/UT–1 is 9,306 ac (3,760 ha) in extent and totals 24 mi (39 km) of continuous stream made up of a 15-mi (24-km)-long continuous segment of the Henry's Fork of the Green River in Uinta and Sweetwater Counties in Wyoming, and a 9-mi (15-km) segment of the Middle Fork of Beaver Creek that originates in Summit County, Utah, and feeds into Henry's Fork near Lonetree in Uinta County, Wyoming. Approximately 8,934 ac (3,615 ha), or 96 percent, of proposed unit WY/UT–1 are privately owned; 228 ac (92 ha), or 3 percent, are in State ownership and managed by the Wyoming Office of State Lands and Investments; and 144 ac (58 ha), or 2 percent, are in Federal ownership including lands located on the Wasatch-Cache National Forest managed by the USFS and lands managed by BLM. This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north.

Texas (2 Units)

Unit 79: TX–1 Arroyo Caballo, Rio Grande; Hudspeth County

Proposed critical habitat unit TX–1 is 1,261 ac (510 ha) in extent and a 8-mi (13-km)-long continuous segment along the Rio Grande upstream and downstream from Arroyo Caballo in Hudspeth County, Texas. The entire unit is privately owned. This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site provides migratory stopover habitat for western yellow-billed cuckoos breeding farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Unit 80: TX–2 Terlingua Creek and Rio Grande; Presidio and Brewster Counties

Proposed critical habitat unit TX–2 is 7,792 ac (3,153 ha) in extent and is a 45-mi (72-km)-long continuous segment from lower Terlingua Creek in Presidio County to the Rio Grande in Brewster County, Texas. The entire unit is in Federal ownership located on Big Bend National Park managed by the NPS. This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a north-south movement corridor for western yellow-billed cuckoos breeding farther north. Tamarisk, a nonnative species that reduces the habitat's value, is a major component of habitat in this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the U.S. Fish and Wildlife Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the U.S. Fish and Wildlife Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers [USACE] under section 404 of the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently

designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the western yellow-billed cuckoo. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the western yellow-billed cuckoo. These activities include, but are not limited to:

(1) Actions that would remove, thin, or destroy riparian western yellow-billed cuckoo habitat, without implementation of an effective riparian restoration plan that would result in the development of riparian vegetation of equal or better quality in abundance and extent. Such activities could include, but are not limited to, removing, thinning, or destroying riparian vegetation by mechanical (including controlled fire), chemical, or biological (poorly managed biocontrol agents) means. These activities could reduce the amount or extent of riparian habitat needed by western yellow-billed cuckoos for sheltering, feeding, breeding, and dispersing.

(2) Actions that would appreciably diminish habitat value or quality through direct or indirect effects. These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation. Such activities could include, but are not limited to, diminished or altered riverflow regimes including water diversion or impoundment, ground water pumping, dam construction and operation, or any other activity which negatively changes the frequency, magnitude, duration, timing, or abundance of surface flow; spraying of pesticides that would reduce insect prey populations within or adjacent to riparian habitat; introduction of nonnative plants, animals, or insects; or habitat degradation from recreation activities. These activities could reduce or fragment the quality or amount or extent of riparian habitat needed by western yellow-billed cuckoos for sheltering, feeding, breeding, and dispersing.

(3) Actions that would permanently destroy or alter western yellow-billed cuckoo habitat. Such activities could include, but are not limited to, discharge of fill material, draining, ditching, tiling, pond construction, and stream channelization (due to roads, construction of bridges, impoundments, discharge pipes, stormwater detention basins, dikes, levees, and others). These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation and microhabitat components necessary for nesting, migrating, food, cover, and shelter.

(4) Actions that would result in alteration of western yellow-billed cuckoo habitat from overgrazing of livestock or ungulate (for example, horses, burros) management. Such activities could include, but are not limited to, unrestricted ungulate access and use of riparian vegetation; excessive ungulate use of riparian vegetation during the non-growing season (for example, leaf drop to bud break); overuse of riparian habitat and upland vegetation due to insufficient herbaceous vegetation available to ungulates; and improper herding, water development, or other livestock management actions. These activities could reduce the volume and composition of riparian vegetation, prevent regeneration of riparian plant species, physically disturb nests, alter floodplain dynamics, alter watershed and soil characteristics, alter stream morphology, and facilitate the growth of flammable nonnative plant species.

(5) Actions in relation to the Federal highway system, which could include, but are not limited to, new road construction and right-of-way designation. These activities could eliminate or reduce riparian habitat along river crossings necessary for reproduction, sheltering, or growth of the western yellow-billed cuckoo.

(6) Actions that would involve funding of activities associated with cleaning up Superfund sites, erosion control activities, flood control activities, and communication towers. These activities could eliminate or reduce habitat for the western yellow-billed cuckoo.

(7) Actions that would affect waters of the United States under section 404 of the CWA. Such activities could include, but are not limited to, placement of fill into wetlands. These activities could eliminate or reduce the habitat necessary for the reproduction, feeding, or growth of the western yellow-billed cuckoo.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i)

of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equivalent or more conservation when compared to a critical habitat designation.

In the case of western yellow-billed cuckoo, the benefits of critical habitat include public awareness of the western yellow-billed cuckoo presence and the importance of habitat protection, and where a Federal nexus exists, increased habitat protection for western yellow-billed cuckoo due to the protection from adverse modification or destruction of critical habitat.

When we evaluate a management or conservation plan and consider the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized, how the plan provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of both inclusion and exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, the Secretary will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat (Table 3) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation. Several tribes have not been identified for potential exclusion at this time; however we will be coordinating and working with all tribes potentially affected by the proposed designation throughout this process and may exclude them from the final designation. Please see *Government-to-Government Relationship with Tribes* section, below, for a complete list of tribes currently within the proposed designation.

Table 3 below provides approximate areas of lands that meet the definition of critical habitat but are under our consideration for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 3—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Specific area	Area meeting the definition of critical habitat, in acres (ha)	Area considered for possible exclusion, in acres (ha)
CA–4	South Fork Kern River Valley	2,862 (1,158)	160 (65)
CA–5	Owens River	1,598 (647)	1,598 (647)
CA–6	Prado Flood Control Basin	4,406 (1,784)	4,406 (1,784)
CA/AZ–1	Colorado River 1	78,961 (31,954)	55,061 (22,292)
CA/AZ–2	Colorado River 2	23,452 (9,491)	20,025 (8,107)
AZ–1	Bill Williams River	3,390 (1,372)	2,640 (1,069)
AZ–2	Alamo Lake	2,794 (1,131)	1,840 (745)
AZ–3	Lake Mead	6,734 (2,725)	6,734 (2,725)
AZ–4	Lower Gila River	12,047 (4,875)	7,413 (3,001)
AZ–7	Gila and Salt Rivers	17,585 (7,116)	868 (351)
AZ–11	Beaver Creek and tributaries	2,082 (842)	3 (1)
AZ–12	Lower Verde River and West Clear Creek	2,053 (831)	43 (17)

TABLE 3—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT—Continued

Unit	Specific area	Area meeting the definition of critical habitat, in acres (ha)	Area considered for possible exclusion, in acres (ha)
AZ–13	Horseshoe Dam	626 (253)	626 (253)
AZ–14	Tonto Creek	3,670 (1,485)	3,155 (1,277)
AZ–20	Lower San Pedro and Gila Rivers	23,399 (9,469)	23,399 (9,469)
AZ–22	Peritas Wash	894 (362)	894 (362)
AZ–23	Arivaca Wash and San Luis Wash	5,765 (2,333)	5,765 (2,333)
AZ–25	Upper Cienega Creek	5,204 (2,106)	5,204 (2,106)
AZ–28	Gila River 1	20,726 (8,388)	10,183 (4,123)
AZ–29	Salt River	2,590 (1,048)	2,469 (1,000)
AZ–30	Lower Cienega Creek	2,360 (955)	2,360 (955)
AZ–34	Lower Verde River	1,079 (437)	1,079 (437)
AZ–37	Florida Wash	188 (76)	188 (76)
NM–1	San Juan River 1	6,354 (2,571)	1,041 (421)
NM–7	Middle Rio Grande 2	1,173 (475)	1,173 (475)
NM–8	Middle Rio Grande 1	61,959 (25,074)	17,096 (6,922)
CO–6	Rio Grande 3	9,765 (3,952)	9,751 (3,947)
CO–7	Conejos River	8,986 (3,637)	8,656 (3,503)
ID–1	Snake River 1	9,294 (3,761)	3,427 (1,312)

We are considering excluding these areas because:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

However, we specifically solicit comments on the inclusion or exclusion of these areas. In the paragraphs below, we provide a detailed analysis of exclusion of these lands under section 4(b)(2) of the Act. We have also added an Addendum entitled Land Ownership/Management and Potential Economic Impacts for Proposed Yellow-billed Cuckoo Critical Habitat to our Incremental Effects Memorandum that lays out in table form the Service's policy considerations under section 4(B)(2) of the Endangered Species Act. This Addendum was developed following the finalization of the Incremental Effects Memorandum and the information in the Incremental Effects Memorandum was used to inform the policy considerations.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for western yellow-billed cuckoo are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides an equal or greater level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented in the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the following HCPs, plans, partnerships, and agreements may fulfill the above criteria, and will consider the exclusion of these Federal, tribal, and non-Federal lands covered by these plans that provide for the conservation of the western yellow-billed cuckoo. We are requesting comments on the benefits to the western yellow-billed cuckoo from these following HCPs, plans, partnerships, and agreements. However, at this time, we are not proposing the exclusion of any areas in this proposed critical habitat designation for the western yellow-billed cuckoo. We specifically solicit comments on the inclusion or exclusion of such areas and request any information on any other potential exclusions. We may consider other areas for exclusion based on public comment and information we receive and on our further review of the proposed designation and its potential impacts.

Most of the following information on HCPs, plans, partnerships, and agreements was obtained from the August 15, 2011, proposed designation of revised critical habitat for the southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*) (76 FR 50542). The areas used by the flycatcher and western yellow-billed cuckoo overlap in several areas in the southwestern United States and management actions for the flycatcher often benefit the western yellow-billed cuckoo. These various plans describe beneficial actions for the flycatcher within the same area that we are proposing to designate as western yellow-billed cuckoo critical habitat. We will consider whether these beneficial

actions for the flycatcher are appropriate for considering exclusion of a given proposed western yellow-billed cuckoo unit from final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act.

California

South Fork Kern River Valley (Unit 4 CA–4) (Hafenfeld Ranch Conservation Easement)

The Hafenfeld Ranch owns and manages a segment (40 ac (16 ha)) of proposed western yellow-billed cuckoo critical habitat along the South Fork Kern River within the Kern River Management Unit in Kern County, California. The Hafenfeld Ranch has developed a conservation easement and plan with the Natural Resources Conservation Service that provides management and protections for flycatcher habitat. We are evaluating whether these actions also provide benefit for the western yellow-billed cuckoo. The Hafenfeld parcel completes a continuous corridor of willow-cottonwood riparian habitat along the South Fork Kern River that connects the east and west segments of the Audubon Society's Kern River Preserve. The conservation easement and plan establishes that these lands are managed for the benefit of the flycatcher by restoring, improving, and protecting its habitat. Management activities include: (1) Limiting public access to the site, (2) winter-only grazing practices (outside of the flycatcher nesting season), (3) protection of the site from development or encroachment, (4) maintenance of the site as permanent open space that has been left predominantly in its natural vegetative state, and (5) spreading of flood waters to promote the moisture regime and wetland and riparian vegetation for the conservation of the flycatcher. Prohibitions of the easement that would benefit the conservation of the flycatcher include: (1) Haying, mowing, or seed harvesting; (2) altering the grassland, woodland, wildlife habitat, or other natural features; (3) dumping refuse, wastes, sewage, or other debris; (4) harvesting wood products; (5) draining, dredging, channeling, filling, leveling, pumping, diking, or impounding water features or altering the existing surface water drainage or flows naturally occurring within the easement area; and (6) building or placing structures on the easement.

Based on the actions to benefit the flycatcher we will consider excluding the Hafenfeld Ranch lands within Unit 4 (40 ac (16 ha)) from final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act.

Sprague Ranch

Sprague Ranch is an approximately 2,479-ac (1,003-ha) parcel, which includes approximately 395 ha (975 ac) of floodplain habitat located along the South Fork of the Kern River in Kern County, California. Sprague Ranch was purchased by the USACE as a result of biological opinions for the long-term operation of Lake Isabella Dam and Reservoir (Service 1996 File Nos. 1–1–96–F–27; 1–1–99–F–216; and 1–1–05–F–0067), specifically to provide habitat and conservation for the flycatcher. Many of the actions may also benefit the western yellow-billed cuckoo. During the periods of time flycatcher habitat is not available at Lake Isabella Reservoir as a result of short-term inundation from Isabella Dam operations, Sprague Ranch is expected to provide habitat for the flycatcher. The USACE, National Audubon Society (Audubon), and California Department of Fish and Wildlife (CDFW) (formerly California Department of Fish and Game) have a joint management agreement for this property, which is important flycatcher habitat. Sprague Ranch is located immediately north and adjacent to the Kern River Preserve, which is owned and operated by Audubon, and shares a common border with the Kern River Preserve (KRP) of over 3 mi (4.8 km). Sprague Ranch contains existing riparian forest that can support and maintain nesting territories and migrating and dispersing flycatchers. Other portions of the ranch are believed to require restoration and management in order to become nesting flycatcher habitat. Activities such as nonnative vegetation control and native tree plantings are other management activities expected to occur. Sprague Ranch is currently being managed in accordance with the terms and conditions of the biological opinions specifically for the flycatcher.

Based on the anticipated benefits to the western yellow-billed cuckoo that would derive from the actions to benefit the flycatcher we will consider excluding approximately 120 ac (49 ha) in Unit 4 along the South Fork Kern River on Sprague Ranch from final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act.

Owens River (Unit 5, CA–5)

LADWP Conservation Strategy. The LADWP owns and manages a proposed segment of western yellow-billed cuckoo critical habitat along the Owens River in Inyo County, California. We believe that LADWP owns and manages the entire extent of 1,598 ac (647 ha) of western yellow-billed cuckoo habitat within this proposed unit. The U.S. Fish and Wildlife Service and the LADWP signed a memorandum of understanding in 2005, to implement a flycatcher conservation strategy designed to proactively manage flycatchers in the Owens Management Unit, along the Owens River from Long Valley Dam downstream to 4 mi (6 km) north of Tinemaha Reservoir. The conservation strategy addresses three elements—livestock grazing, recreational activities, and wildfires—which have the potential to adversely affect flycatcher habitat. The conservation strategy provides specific measures that: (1) Are designed to create suitable breeding habitat for the flycatcher; and (2) avoid and minimize potential adverse effects, such as the degradation or loss of habitat that may be associated with grazing activities, recreational activities, and wildland fires. Based on the actions to benefit the flycatcher, which will also benefit the western yellow-billed cuckoo, we will consider excluding 1,598 ac (647 ha) of LADWP lands from the final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act. We encourage any public comments in relation to this consideration.

Prado Basin (Unit 6, CA–6)

We are considering excluding under section 4(b)(2) of the Act areas covered by the Western Riverside MSHCP from the final designation of critical habitat for the western yellow-billed cuckoo. We are considering to do so based on the protections described below (see ''Exclusions Based on Other Relevant Impacts'' section) and per the provisions laid out in the MSHCP's implementing agreement, to the extent consistent with the requirements of section 4(b)(2) of the Act. We are considering excluding all of proposed Unit 6 (4,406 ac (1,784 ha)) from the final designation.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside MSHCP)

The Western Riverside MSHCP is a comprehensive, multi-jurisdictional plan encompassing approximately 1,260,000 ac (510,000 ha) of the Riverside County west of the San Jacinto Mountains (County of Riverside 2003a, p. 1–1). The Western Riverside MSHCP is a subregional plan under the State of California's Natural Community Conservation Planning Act (NCCP) and was developed in cooperation with the CDFW (County of Riverside 2003a, p. 1–1). The Western Riverside MSHCP is a

multi-species conservation program designed to minimize and mitigate the effects of expected habitat loss and associated incidental take of 146 listed and nonlisted ''covered species,'' including the western yellow-billed cuckoo (County of Riverside 2003d, pp. B–555 to B–572). A section 10(a)(1)(B) permit for the Western Riverside MSHCP was issued to 22 permittees on June 22, 2004, for a period of 75 years (Service 2004b, p. 1). There are now 27 permittees under the Western Riverside MSHCP.

When fully implemented, the Western Riverside MSHCP will conserve approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) in addition to the approximately 347,000 ac (140,400 ha) of pre-existing natural and open space areas (known in the plan as ''Public/Quasi-Public'' (PQP) lands) (County of Riverside 2003a, pp. 1–16 to 1–17). The PQP lands include those under the ownership of public or quasi-public agencies, primarily the USFS and BLM, as well as the USACE, plus permittee-owned or controlled open-space areas managed by the State of California and the County of Riverside. Lands owned by the Orange County Water District (OCWD) within the Prado Basin are also considered PQP lands under the Western Riverside MSHCP. The Plan's ''Additional Reserve Lands'' are not fully mapped or precisely delineated (that is, they are not ''hard-lined''); rather, they are textual descriptions of habitat necessary to meet the conservation goals for all covered species within the boundaries of the approximately 500,000-ac (202,343-ha) ''MSHCP Conservation Area'' and are determined as implementation of the HCP occurs.

Under the Western Riverside MSHCP, the Prado Basin is considered ''core habitat'' and a ''linkage'' area (County of Riverside 2003b, p. 3–31; Service 2004a, p. 49). As discussed in the Western Riverside MSHCP (County of Riverside 2003c, pp. 9–87 to 9–88), the HCP was designed to preserve ''core areas'' of the western yellow-billed cuckoo, including the Prado Basin, which is considered an ''important core area'' for the species.

We evaluated the effects of the Western Riverside MSHCP on the western yellow-billed cuckoo and its habitat within the plan boundaries as part of the inter-Service section 7 consultation conducted for the MSHCP. As summarized in the biological opinion (Service 2004a, pp. 231–232), we estimated 4,613 ac (1,867 ha) of modeled habitat within the Plan Area. Only 77 ac (31 ha), or 2 percent, of this modeled habitat is outside the MSHCP Conservation Area. To offset potential impacts to the western yellow-billed cuckoo in the Plan Area, 4,250 ac (1,720 ha), or 92 percent, of western yellow-billed cuckoo modeled habitat will remain within PQP Lands. An additional 287 ac (116 ha), or 6 percent, of modeled habitat will be conserved in Additional Reserve Lands with management prescriptions that will benefit the western yellow-billed cuckoo. In total, 4,537 ac (1,836 ha), or 98 percent, of the modeled habitat will be conserved or remain in the Plan Area.

Additionally, the OCWD, which funds and maintains its lands in Prado Basin, has set aside 124 acres of riparian habitat and has funded a conservation program. The conservation program was established primarily to benefit the endangered least Bell's vireo (*Vireo bellii pusillus*), but it will also benefit other species dependent on riparian vegetation, including the western yellow-billed cuckoo. The program includes cowbird trapping and removal of giant reed along the Santa Ana River (Service 2004a, p. 59).

We determined that implementing the Western Riverside MSHCP plan would not place the western yellow-billed cuckoo at risk of extinction (Service 2004a, p. 235). In addition, we acknowledged in section 14.10 of the implementing agreement (IA) for the Western Riverside MSHCP that the plan provides a comprehensive, habitat-based approach to the protection of covered species, including the western yellow-billed cuckoo, by focusing on lands essential for the long-term conservation of the covered species and appropriate management for those lands (Western Riverside County Regional Conservation Authority (WRCRCA) *et al.* 2003, p. 51). The most significant threats to the species are the destruction and modification of its habitat, habitat rarity, and small isolated populations. The Western Riverside MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of western yellow-billed cuckoo. As discussed above, we are considering excluding lands within the Plan Areas for the Western Riverside MSHCP. As noted in the Information Requested section, we are soliciting comments on whether to exclude areas covered by HCPs.

Arizona

Alamo Lake (Unit 10, AZ–2), Alamo Lake State Wildlife Area (AWA)

The Alamo Lake State Wildlife Area (AWA) in La Paz and Mohave Counties, Arizona, was created under provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), Public Land Order 492 (PLO 492), and the General Plan agreement between the Secretary of the Army, Secretary of the Interior, and Director of Arizona Game and Fish, signed January 19, 1968 (Arizona Game and Fish Department-Arizona State Parks 1997). A lease agreement between the Arizona Game and Fish Department Commission and the USACE was signed in 1970, establishing the AWA for fish and wildlife conservation and management purposes (Arizona Game and Fish Department-Arizona State Parks 1997). The present lease area encompasses approximately 9,140 ha (22,586 ac).

Public input was solicited and addressed in development of the AWA Management Plan and the NEPA review process (Arizona Game and Fish Department-Arizona State Parks 1997). The corresponding Alamo Wildlife Area Property Operational Management Plan addressing the operations of the property, together with the budget, is updated as needed to reflect the changes in operational management (Arizona Game and Fish Department 2012).

Proposed western yellow-billed cuckoo critical habitat occurs along the Big Sandy, Santa Maria, and Bill Williams Rivers, which make up the upper portion of Alamo Lake. The AWA Management Plan describes the unique riparian, wetland, and aquatic aspects of the area for a variety of species, specifically targeting the flycatcher for management and including the western yellow-billed cuckoo as a species of wildlife concern. Two of the specific resources that are directed toward the habitat needs of the flycatcher and the western yellow-billed cuckoo: (1) Maintain and enhance aquatic and riparian habitats to benefit wildlife; and (2) restore, manage, and enhance habitats for wildlife of special concern. Large Fremont cottonwood and Goodding's willow forests, mesquite bosque, and small areas of wetland currently exist along the Big Sandy, Santa Maria, and upper Bill Williams Rivers. Increasing and improving these habitats will benefit riparian- and wetland-dependent species (Arizona Game and Fish Department 2012, p. 4–6). The objective for maintaining and enhancing riparian habitat includes (a) Maintaining a reservoir level sufficient to ensure suitable soil moisture conditions in the mixed riparian forest, and (b) managing burros and eliminating trespass cattle to ensure that browsing does not harm existing habitat or impair recruitment of replacement vegetation. Livestock grazing is

excluded from the riparian areas on the upper end of Alamo Lake and the lower portions of the Santa Maria and Big Sandy Rivers. Burro management objectives are to monitor and limit use of riparian vegetation such that annual bark stripping of live trees does not exceed 3 percent in any of the key monitoring areas (Arizona Game and Fish Department 2012, p. 10). Fencing may be needed to exclude unauthorized livestock and feral burros, exclude elk, control OHV access, and better manage authorized livestock (Arizona Game and Fish Department 2012, pp. 10–12). We will consider excluding 1,840 ac (745 ha) of the Bill Williams, Santa Maria, and Big Sandy Rivers within the Alamo Lake State Wildlife Area from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Colorado River; Bill Williams River; Lake Meade; and Lower Gila River (Unit 7: CA/AZ–1; Unit 8: CA/AZ–2; Unit 9: AZ–1; Unit 11: AZ–3; and Unit 12: AZ–4)

Lower Colorado River Multi-Species Conservation Plan (LCR MSCP). The Lower Colorado River Multi-Species Conservation Program (2004, pp. 1–506) was developed for areas along the lower Colorado River along the borders of Arizona, California, and Nevada from the conservation space of Lake Mead to Mexico, in the Counties of La Paz, Mohave, and Yuma in Arizona; Imperial, Riverside, and San Bernardino Counties in California; and Clark County in Nevada. The LCR MSCP primarily covers activities associated with water storage, delivery, diversion, and hydroelectric production. The record of decision was signed by the Secretary of the Interior on April 2, 2005. Discussions began on the development of this HCP in 1994, but an important catalyst was a 1997 jeopardy biological opinion for the flycatcher issued to Reclamation for lower Colorado River operations. The Federal agencies involved in the LCR MSCP include Reclamation, Bureau of Indian Affairs (BIA), NPS, BLM, Western Area Power Administration, and the U.S. Fish and Wildlife Service.

The LCR MSCP planning area primarily surrounds proposed western yellow-billed cuckoo critical habitat along the lower Colorado River from Lake Mead to the southerly International Border. Portions of the Colorado River, Lake Mead, Virgin River, and Muddy River in Arizona, Utah, and Nevada, are included where they surround Lake Mead (including the conservation space of Lake Mead, which extends up the Colorado River to Separation Canyon). Also, a portion of the Bill Williams River at the Colorado River confluence at Lake Havasu occurs within the LCR MSCP planning area. The LCR MSCP permittees will create and maintain 4,050 ac (1,639 ha) of western yellow-billed cuckoo habitat, reduce the risk of loss of created habitat to wildfire, replace created habitat affected by wildfire, and avoid and minimize operational and management impacts to western yellow-billed cuckoos over the 50-year life of the permit (2005 to 2055) (Lower Colorado River Multi-Species Conservation Program 2004, pp. 5–30–5–36, Table 5–10, 5–58–5–60). Additional research, management, monitoring, and protection of western yellow-billed cuckoos will occur. In addition to western yellow-billed cuckoo habitat creation and subsequent management, the LCR MSCP will provide funds to ensure existing western yellow-billed cuckoo habitat is maintained. Western yellow-billed cuckoo management associated with the LCR MSCP is conducted in conjunction with management occurring on the National Wildlife Refuges (Bill Williams, Havasu, Cibola, and Imperial) and Tribal lands (Hualapai, Fort Mohave, Chemehuevi, Colorado River, and Quechan Tribes) along the LCR. We will consider excluding 64,652 ac (26,175 ha) of land including portions of the Colorado River from the uppermost storage space of Lake Mead downstream to the southerly International Border and portions of tributaries (Virgin, Muddy, and Bill Williams Rivers) to the Colorado River that may occur within the LCR MSCP planning area from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Fort Mojave Indian Tribe (Unit 8, CA/AZ–2). Fort Mojave Indian Tribal lands contain a proposed Colorado River segment of western yellow-billed cuckoo critical habitat in the above Lake Havasu in Mohave County, Arizona. The Fort Mojave Tribe has finalized a flycatcher management plan (SWFMP), compatible with western yellow-billed cuckoo management (Fort Mojave Indian Tribe 2005, pp. 1–24). The Fort Mojave Tribe's SWFMP describes that within the Tribe's budgetary constraints, they commit to management that will sustain the current value of saltcedar, willow, and cottonwood vegetation that meets moist soil conditions necessary to maintain flycatcher habitat; monitoring to determine flycatcher presence and vegetation status in cooperation with the Service; and wildfire response and law enforcement to protect suitable habitats. The Fort Mojave Indian Tribe may also work in conjunction with the LCR MSCP on additional riparian management (Fort Mojave Indian Tribe 2005, pp. 1–24). We will consider excluding the Colorado River within Fort Mojave Tribal land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Colorado River Indian Reservation (Unit 7, CA/AZ–1). The Colorado River Indian Tribal lands (CRIT) contain a proposed Colorado River segment of western yellow-billed cuckoo habitat in La Paz County, Arizona. The Colorado River Indian Tribes have finalized a flycatcher management plan compatible with western yellow-billed cuckoo management (Colorado River Indian Tribes 2005, pp. 1–48). The CRIT's SWFMP describes a commitment to conduct a variety of habitat management actions. The SWFMP also identifies the assessment, identification, and protection of flycatcher migration habitat (Colorado River Indian Tribes 2005, pp. 1–48). The SWFMP identifies protecting breeding habitat with the Ahakhav Tribal Preserve and in any areas established for flycatchers with the LCR MSCP. Seasonal closures of occupied flycatcher habitat during the breeding season may be necessary and established by the CRIT. Protection of habitat from fire is established in the SWFMP, as well as protections from other possible stressors such as overgrazing, recreation, and development (Colorado River Indian Tribes 2005, pp. 1–48). The CRIT may also work in conjunction with the LCR MSCP on additional riparian management. We will consider excluding the Colorado River within CRIT land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Fort Yuma Indian Reservation (Unit 7, CA/AZ–1). The Quechan Tribal lands contain a proposed Colorado River segment of western yellow-billed cuckoo critical near the City of Yuma in Yuma County, Arizona. The Quechan Tribe has completed a SWFMP that is compatible with western yellow-billed cuckoo management (Quechan Indian Tribe 2005, pp. 1–30). The Quechan Tribe's SWFMP describes a commitment to conduct a variety of habitat management actions. The Tribe will manage riparian tamarisk that is intermixed with cottonwood, willow, mesquite, and arrowweed (*Pluchea sericea*) to maximize potential value for nesting flycatchers (Quechan Indian Tribe 2005, pp. 1–30). Any permanent land use changes for recreation or other reasons will consider and support flycatcher needs, as long as consistent

with Tribal cultural and economic needs. The Tribe will consult with the Service to develop and design plans that minimize impacts to flycatcher habitat. The Tribe will establish collaborative relationships with the Service to benefit the flycatcher, including monitoring for flycatcher presence and habitat condition, within the constraints of available funds to the Tribe. This action is anticipated to provide benefits to the western yellow-billed cuckoo. The Quechan Tribe may also work in conjunction with the LCR MSCP on additional riparian management. We will consider excluding the Colorado River within Quechan Tribal land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Cocopah Tribe of Arizona (Unit 7, CA/AZ–1). The Cocopah Tribal lands, located 13 mi (21 km) south of Yuma, in Yuma County, Arizona, contain proposed western yellow-billed cuckoo critical habitat along the lower Colorado River. We anticipate coordinating with the Cocopah Tribe regarding development of a riparian plan compatible with western yellow-billed cuckoo management. The Cocopah Tribe may also work in conjunction with the LCR MSCP on additional riparian management. We will consider excluding the Cocopah Tribe of Arizona land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Based on these conservation plans, we will consider excluding 27,215 ac (11,013 ha) of Tribal land in the two Colorado River units.

Gila River Indian Community (Unit 15: AZ–7 Gila and Salt Rivers)

The northern boundary of the Gila River Indian Community lands adjacent to the southwestern boundary of Phoenix, in Maricopa County, Arizona, contain proposed western yellow-billed cuckoo critical habitat along the Salt and Gila rivers. We anticipate coordinating with the Gila River Indian Community regarding development of a riparian plan compatible with western yellow-billed cuckoo management. We will consider excluding 868 ac (351 ha) of Tribal land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Horseshoe Dam (Unit 21: AZ–13) and Lower Verde River (Unit 42: AZ–34)

Horseshoe and Bartlett Dam Habitat Conservation Plan (HCP)

In June 2008, the Service issued an incidental take permit to the Salt River Project (SRP) for 16 species that inhabit Horseshoe and Bartlett Reservoirs and the Verde River above and below the two dams in Gila and Maricopa Counties (Salt River Project 2008, p. 6). The western yellow-billed cuckoo and flycatcher are two of the covered species in the permit. Critical habitat on the Verde River is proposed within the water storage space and upstream of Horseshoe Reservoir and downstream of Bartlett Lake. The area covered by the permit for the western yellow-billed cuckoo and flycatcher includes Horseshoe Reservoir up to an elevation of 2,026 ft (618 m) and Bartlett up to an elevation of 1,748 ft (533 m), (Salt River Project 2008, p. ES–1). The water storage space within Horseshoe Reservoir is the primary area where impacts to the western yellow-billed cuckoos and flycatchers are anticipated to occur through periodic inundation and drying of habitat (Salt River Project 2008, p. 3). Water storage and periodic inundation of western yellow-billed cuckoo and flycatcher habitat would likely result in delayed or lost breeding attempts, decreased productivity and survivorship of dispersing adults in search of suitable breeding habitat, and decreased productivity of adults that attempt to breed at Horseshoe Reservoir. The 50-year Horseshoe and Bartlett Dam HCP provides measures to minimize and mitigate incidental take while allowing the continued operation of the two reservoirs (Salt River Project 2011a, p. 5). These goals will be achieved with the following measures: (1) Managing water levels in Horseshoe Reservoir to the extent practicable to benefit or reduce impacts to the covered species; and (2) acquiring and managing flycatcher and western yellow-billed cuckoo habitat along rivers in central Arizona to provide a diversity of geographic locations with habitat like Horseshoe Reservoir (Salt River Project 2008, p. ES–4). Mitigation efforts include operation of Horseshoe Reservoir to support tall, dense vegetation at the upper end of the reservoir and to make riparian habitat available earlier in the nesting season (Salt River Project 2011a, p. 5). In addition, the HCP obligates the SRP to monitor western yellow-billed cuckoos, flycatchers, and habitat at Horseshoe Reservoir (Salt River Project 2011a, p. 8) and mitigation properties. The SRP must acquire and manage in perpetuity 200 ac (81 ha) of riparian habitat by fee title or conservation easements (Salt River Project 2011a, p. 5). The SRP has acquired a conservation easement for 150 ac (60 ha) on the Gila River near Fort Thomas and is working on acquiring an additional 50 ac (20 ha) (Salt River Project 2011a, p. 5). The SRP provides water from Horseshoe and Bartlett Reservoirs directly to various beneficiaries of these storage facilities for irrigation and other uses (Salt River Project 2008, pp. 11–22). Water from Horseshoe, Bartlett, and the SRP's other reservoirs is provided directly by the SRP to shareholder lands for irrigation and other uses, and is delivered to the cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and Tolleson for municipal use on shareholder lands. Water deliveries are also made under specific water rights in Horseshoe and Bartlett Reservoirs held by the City of Phoenix, Salt River Pima Maricopa Indian Community, and Fort McDowell Yavapai Nation. In addition, water is delivered from the SRP reservoir system to the cities, Gila River Indian Community, Buckeye Irrigation Company, RWCD, and others in satisfaction of their independent water rights. Finally, exchange agreements between a number of entities and the SRP pursuant to State and Federal law are facilitated by stored water from Horseshoe and Bartlett Reservoirs. We will consider excluding 626 ac (253 ha) in the water storage area of Horseshoe Reservoir and the 1,079 ac (437 ha) of the Lower Verde River from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Roosevelt Lake (Unit 22: AZ–14, Tonto Creek, and Unit 37: AZ–29, Salt River)

In February 2003, the Service issued an incidental take permit to the SRP for four riparian bird species, including the western yellow-billed cuckoo and flycatcher for 50 years (Salt River Project 2011b, p. 1). The Tonto Creek and the Salt River confluences with Roosevelt Lake are proposed as western yellow-billed cuckoo critical habitat. The activity covered by the permit is the continued operation by the SRP of Roosevelt Dam and Lake in Gila and Maricopa Counties, Arizona, up to an elevation of 2,151 ft (656 m) (Salt River Project 2002, ES–1). The HCP specifies the following measures to minimize and mitigate incidental take of the four species: Creating and managing riparian habitat at Roosevelt Lake; and acquiring and managing riparian habitat in river basins in central Arizona that the four target bird species are expected to occupy (Salt River Project 2002, ES–4). The HCP commits the SRP to acquire 2,250 ac (911 ha) credits, including acquisition and management of at least 1,500 ac (607 ha) of riparian habitat by fee title or conservation easement off-site on the San Pedro, Verde, and Gila

rivers and protection of up to an additional 750 ac (304 ha). The SRP has exceeded this obligation, accruing 2,591 ac (1,049 ha) credits (Salt River Project 2011b, p. 17). The SRP monitors vegetation at Roosevelt Lake to ensure that adaptive management thresholds or permit limits are not exceeded (Salt River Project 2011b, p. 6). Because flycatchers and western yellow-billed cuckoos rely on similar riparian habitat, most of the mitigation measures serve both species.

Western yellow-billed cuckoo and flycatcher habitat at Roosevelt Lake varies depending on how and when the lake recedes as a result of water in-flow and subsequent storage capacity and delivery needs. Even in the expected high-water years, some flycatcher and western yellow-billed cuckoo habitat would persist at Roosevelt Lake. Measures in the HCP to protect habitat at Roosevelt Lake include funding a USFS employee to patrol and improve protection of flycatcher habitat in the Roosevelt lakebed from adverse activities such as fire ignition from human neglect, improper vehicle use, etc. (Salt River Project 2011b, p. 13). The SRP also developed habitat near Roosevelt Lake at offsite Rock House Farm Site to serve as a potential refugium when Roosevelt Lake is near capacity (Salt River Project 2011, p. 15). The SRP monitors habitat conditions, flycatchers, and western yellow-billed cuckoos at Roosevelt Lake and at offsite mitigation properties (Salt River Project 2011, pp. 19–20). We will consider excluding the water storage area of Roosevelt Lake including 3,155 ac (1,277 ha) of Unit AZ–14 and 2,469 ac (1,000 ha) of Unit AZ–29 from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Pima County Multi-Species Conservation Plan (Unit 28: AZ–20, Lower San Pedro River and Gila River; Unit 30: AZ–22, Peritas Wash; Unit 31: AZ–23, Arivaca Wash and San Luis Wash; Unit 33: AZ–25, Upper Cienega Creek; Unit 38: AZ–30, Lower Cienega Creek; and Unit 45: AZ–37, Florida Wash).

Under the draft Multi-Species Conservation Plan, Pima County will avoid, minimize, and mitigate impacts to 44 species and their habitat within the Permit Area (a subset of Pima County) during the 30-year section 10(a)(1)(B) permit period (Pima County 2011a, p. xi). The primary covered activities are maintenance and construction activities and certain development activities of the private sector. Pima County anticipates providing approximately 112,000 ac (45,325 ha) of mitigation for approximately 36,000 ac (14,568 ha) of disturbance resulting from covered activities (Pima County 2011a, p. xi). The plan will conserve and manage western yellow-billed cuckoos by: (1) Implementing the Pima County Riparian Protection Ordinance to minimize habitat loss; and (2) protecting water rights at Cienega Creek Natural Preserve and Buehman Canyon to maintain and restore habitat (Pima County 2011b, p. A–80). Proposed critical habitat within the jurisdiction of Pima County includes parts of Cienega Creek, Florida Wash, Penitas Wash, and the San Pedro River (Pima County 2011a, p. 14). Pima County will conduct western yellow-billed cuckoo surveys, although the frequency and locations have yet to be determined. Approximately 8,962 ac (3,626 ha) are proposed as mitigation for the projected loss of 74 ac (30 ha) of western yellow-billed cuckoo habitat; however, these 74 ac (30 ha) are not proposed as critical habitat (Pima County 2011b, p. A–80). Additional impacts within western yellow-billed cuckoo habitat resulting from the covered activities may emerge over the 30-year permit period and will be mitigated accordingly. Pima County will develop a riparian and aquatic species management that will include conservation actions to benefit covered species (Pima County 2011a, p. 51). The amount of mitigation credit for implementation of these conservation actions will be negotiated with the Service on a case-by-case basis (Pima County 2011a, p. 51). We are considering excluding 37,812 ac (15,308 ha) in these units from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Yavapa-Apache Nation (Unit 17: AZ–9, Upper Verde River; Unit 19: AZ–11, Beaver Creek and Tributaries; and Unit 20: AZ–12, Lower Verde River and West Clear Creek)

The Yavapai-Apache Nation contains Verde River segments of proposed western yellow-billed cuckoo critical habitat in Yavapai County, Arizona. The small parcels total 638 acres and are located near Clarkdale, Camp Verde, Middle Verde, Rimrock, and the I–17 interchange for Montezuma Castle National Monument (Yavapai-Apache Nation 2005, p. 6). The Yavapai-Apache Nation has completed a SWFMP that is compatible with western yellow-billed cuckoo management (Yavapai-Apache Nation 2005, pp. 1–15). The Yavapai-Apache Nation's SWFMP addresses and presents assurances for flycatcher habitat conservation. The Yavapai-Apache Nation will, through zoning, Tribal ordinances and code requirements, and measures identified in the flycatcher recovery plan, take all practicable steps to protect known flycatcher habitat located along the Verde River (Yavapai-Apache Nation 2005, p. 14). The Yavapai–Apache Nation will take all reasonable measures to assure that no net habitat loss or permanent modification of flycatcher habitat will result from recreational and road construction activities, or habitat restoration activities, and will take all reasonable steps to coordinate with the Service so that flycatcher habitat is protected. Within funding limitations and under confidentiality guidelines established by the Yavapai-Apache Nation, they will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, or other beneficial flycatcher management activities. Because flycatchers and western yellow-billed cuckoos rely on similar riparian habitat, most of the mitigation measures serve both species. We will consider excluding the Verde River segments totaling 46 ac (18 ha) within the Yavapai-Apache Nation from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

San Carlos Reservation (Unit 28: AZ–20, Lower San Pedro River and Gila River; Unit 36: AZ–28, Gila River 1)

The San Carlos Apache Tribal lands contain proposed western yellow-billed cuckoo critical habitat within the conservation space of San Carlos Lake and the Gila River upstream from San Carlos Lake, in Gila County, Arizona. The San Carlos Apache Tribe has finalized a SWFMP that is compatible with western yellow-billed cuckoo management (San Carlos Apache Tribe 2005, pp. 1–65). Implementation of the San Carlos Apache Tribe's SWFMP will protect all known flycatcher habitat on San Carlos Tribal Land and assure no net habitat loss or permanent modification will result (San Carlos Apache Tribe 2005, p. 36). All habitat restoration activities (whether to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification. All reasonable measures will be taken to conduct livestock grazing activities under the guidelines established in the Recovery Plan for the flycatcher. Within funding limitations

and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, or other beneficial flycatcher management activities (San Carlos Apache Tribe 2005, pp. 35–36, 45–46). Because flycatchers and western yellow-billed cuckoos rely on similar riparian habitat, most of the mitigation measures serve both species. We will consider excluding 10,912 ac (4,418 ha) of San Carlos Apache Tribal land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

New Mexico

San Juan River; San Juan County, New Mexico (Unit 46: NM–1)

Tribal Management Plans and Partnerships—Navajo Nation

The Navajo Nation contains a river segment of the proposed San Juan River 1 Unit in San Juan County, New Mexico. We will coordinate with these tribes and examine what western yellow-billed cuckoo conservation actions, management plans, and other commitments occur on these lands for potential exclusion of 1,041 ac (421 ha) of Navajo Nation land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Upper Rio Grande (Unit 50: NM–6) and Middle Rio Grande (Unit 51: NM–7)

Tribal Management Plans and Partnerships—Santa Clara, San Juan (Ohkay Owingue), and the San Ildefonso Pueblos. The Santa Clara Pueblo and the San Juan Pueblo (Ohkay Owingue) contain proposed western yellow-billed cuckoo critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Rio Arriba County, New Mexico. The San Ildefonso Pueblo contains proposed western yellow-billed cuckoo critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Santa Fe County, New Mexico.

The Santa Clara Pueblo, the San Juan Pueblo (Ohkay Owingue), and the San Ildefonso Pueblo have conducted a variety of voluntary measures, restoration projects, and management actions to conserve the western yellow-billed cuckoo and its habitat on their lands. These Pueblos have made a commitment to the Service to develop an integrated resources management plan to address multiuse, enhancement, and management of their natural resources. The pueblos have implemented fuel reduction of flammable exotic riparian vegetation and native tree restoration projects in the riparian area since 2001, carefully progressing in incremental stages to reduce the overall effects to wildlife. We will consider excluding the Santa Clara Pueblo, the San Juan Pueblo (Ohkay Owingue), and the San Ildefonso Pueblo lands totaling 1,173 ac (475 ha) from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Middle Rio Grande (Unit 52: NM–8)

Tribal Management Plans and Partnerships—Cochiti, Santo Domingo, San Felipe, Sandia, and Santa Ana Pueblos. The Cochiti Pueblo, Santo Domingo Pueblo, San Felipe Pueblo, Sandia Pueblo, and Santa Ana Pueblo contain proposed western yellow-billed cuckoo critical habitat along the Rio Grande within the Middle Rio Grande Management Unit in Sandoval County, New Mexico. The Isleta Pueblo contains proposed western yellow-billed cuckoo critical habitat along the Rio Grande within the Middle Rio Grande Management Unit in Bernalillo County, New Mexico.

The Cochiti Pueblo, Santo Domingo Pueblo, San Felipe Pueblo, Sandia Pueblo, Santa Ana Pueblo, and Isleta Pueblo have conducted a variety of voluntary measures, restoration projects, and management actions to conserve the western yellow-billed cuckoo and its habitat on their lands. Cochiti Pueblo, Santo Domingo Pueblo, San Felipe Pueblo, Sandia Pueblo, Santa Ana Pueblo, and Isleta Pueblo made a commitment to the Service to develop an integrated resources management plan to address multiuse, enhancement, and management of their natural resources. The pueblos have implemented fuel reduction of flammable exotic riparian vegetation and native tree restoration projects in the riparian area since 2001, carefully progressing in incremental stages to reduce the overall effects to wildlife. We will consider excluding the Cochiti Pueblo, Santo Domingo Pueblo, San Felipe Pueblo, Sandia Pueblo, Santa Ana Pueblo, and Isleta Pueblo lands totaling 9,509 ac (3,850 ha) from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

U-Bar Ranch (Unit 48: NM–4)

The U-Bar Ranch (Ranch) near Cliff, in Grant County New Mexico, in the Upper Gila Management Area is owned by Pacific Western Land Company (PWLC), a subsidiary of the Freeport-McMoRan Corporation (formerly named Phelps Dodge Corporation)(FMC). Through their efforts and their long-time lessee, FMC has demonstrated a commitment to management practices on the Ranch that have conserved and benefited the western yellow-billed cuckoo population in that area over the past decade. In addition, FMC had privately funded scientific research at and in the vicinity of the Ranch in order to develop data that has contributed to the understanding of habitat selection, distribution, prey base, and threats to the southwestern willow flycatcher. The riparian habitat also has a large number of nesting western yellow-billed cuckoos. Considering the past and ongoing efforts of management and research to benefit the southwestern willow flycatcher, western yellow-billed cuckoo, and riparian habitat, done in coordination and cooperation with the Service, we are considering excluding areas of the U-Bar Ranch from the final designation of critical habitat.

The U-Bar Ranch utilizes a management plan on its pastures within the Gila Valley that are north of the Highway 180 West Bridge and south of the boundary of the Gila National Forest. Eight pastures that incorporate approximately 1,372 ha (3,390 ac) are managed with a plan that is adapted annually for operation of livestock and farming enterprises. The management consists of a multifaceted and highly flexible rest-rotation system utilizing both native forage and irrigated fields. The Ranch's numerous pastures allow a relatively dynamic rotation system that is modified based upon current conditions. Grazing use of river bottom pastures is monitored by daily visual inspections. Use of these pastures is limited to ensure that forage utilization levels are moderate and over-use does not occur. In addition, the riparian areas are monitored regularly, and riparian vegetation is allowed to propagate along the river as well as in irrigation ditches. Some specific management practices, varying in different pastures, which relate to the southwestern willow flycatcher and western yellow-billed cuckoo and their habitat are: (1) Grazing is limited to November through April to avoid negative impacts during migration and nesting season; (2) animal units are adjusted to protect and maintain the riparian vegetation; (3) the irrigation ditches are maintained, along with the vegetation; (4) restoration efforts follow flood events that destroy habitat; and (5) herbicide and pesticides are only used in rare circumstances and are not used during breeding season. These flexible and adaptive management practices have resulted in the expansion,

protection, and successful continuance of a large western yellow-billed cuckoo population in the area.

In 1995, active restoration followed the flooding destruction of the Bennett Farm fields in the 162 ha (400 ac) River Pasture. The Bennett Restoration Project is a series of artificially created, flooded marshy areas located between irrigated and dry-land pastures and the river. The Bennett Restoration Project is a mosaic of vegetation in successional stages with dense patches and lines of young willows and cottonwoods occurring in manmade oxbows. The oxbows occur outside of the active flood channel behind a levee. Water is continuously present and the project has become a marshy habitat.

A significant feature of this riparian area is the amount of water it receives from adjacent irrigated fields. The Ranch has rehydrated ditches and no longer follows past land-use practices, which involved active clearing of woody vegetation from ditch banks. Besides land management practices, PWLC, and the U-Bar Ranch have supported annual southwestern willow flycatcher surveys, where western yellow-billed cuckoo detections are recorded and research in the Gila valley since 1994. Surveyors are trained and permitted in coordination with the Service and survey results are submitted to the Service in annual reports. Southwestern willow flycatcher research on the Ranch has included: Nest monitoring (sites, substrate, and success), diet, microhabitat use, climatic influences on breeding, cowbird parasitism, and distribution and characteristics of territories. Permits for studies are coordinated with the Service and reports are submitted to us for review and comments. The Service will continue to work with the U-Bar Ranch to include the western yellow-billed cuckoo in their existing management plan and research activities. Their current research provides information to apply to grazing and land management. We will consider excluding the areas identified as critical habitat on the U-Bar Ranch from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Idaho

Fort Hall Indian Reservation (Unit 69—Snake River 1 (ID–1)); Tribal Management Plans and Partnerships

The Fort Hall Indian Reservation contains a portion of the Snake River 1 Unit in Bannock and Bingham Counties, Idaho. We have met with staff from the Shoshone-Bannock Tribes and discussed their existing and proposed conservation actions and management plans, which also benefit the western yellow-billed cuckoo, for the area proposed for designation as critical habitat. We will continue to coordinate with the Tribes on these management plans for potential exclusion of 3,424 ac (1,312 ha) of Fort Hall Indian Reservation land from the final designation of western yellow-billed cuckoo critical habitat under section 4(b)(2) of the Act.

Colorado

Rio Grande 3 (Unit 59: CO–6) and Conejos River (Unit 60: CO–7); Partnerships, Conservation Plans, or Conservation Easements on Private Lands

San Luis Valley Regional Habitat Conservation Plan

We are considering excluding critical habitat in the San Luis Valley, Colorado, based on the San Luis Valley Regional HCP, as discussed below. Two critical habitat units are proposed in the San Luis Valley: One on the Rio Grande (Unit 59; CO–6) and one that occurs on both the Conejos River and Rio San Antonio (Unit 60; CO–7). The San Luis Valley Regional HCP was finalized in November 2012. None of the other six proposed critical habitat units in Colorado are being considered for exclusion because there are no HCPs or other management plans in place or under development that cover those critical habitat units.

The species covered in the HCP are the western yellow-billed cuckoo and the flycatcher. The HCP covers nearly 250 mi (403 km) and 2.9 million ac (1.17 million ha), a portion of which is habitat for the western yellow-billed cuckoo, and extends well beyond the stream segments on the Rio Grande, Conejos River, and Rio San Antonio that are proposed as critical habitat. Approximately 10,000 ac (4,047 ha) out of the 15,100 ac (6,111 ha) of riparian habitat in the HCP plan area are cottonwood-dominated. However, the majority of impacted woody riparian habitat will likely be willows. Yellow-billed cuckoos can use willows and other shrubs for foraging and nesting so impacts to western yellow-billed cuckoos can still occur, especially if cottonwoods are nearby or constitute the overstory.

The HCP covers routine agriculture activities (grazing, fence construction and maintenance, ditch clearing and maintenance, water facility maintenance, new small-scale water facility construction, and water management and administration), small community infrastructure activities (vegetation removal from floodways, levee construction and maintenance, sediment removal, infrastructure construction and maintenance, and road and bridge maintenance), and riparian conservation and restoration activities (channel shaping and stabilization, habitat creation and restoration, weed management, and wetland creation and management). Large commercial or residential developments, large water development projects, sanitation or industrial water impoundments, new highway construction, and projects requiring a Federal permit are not covered by the HCP.

The HCP permittees include the Rio Grande Water Conservation District (District); Alamosa, Conejos, Costilla, Rio Grande, Mineral and Saguache Counties; the municipalities of Alamosa, Del Norte, Monte Vista, and South Fork; and the State of Colorado Department of Natural Resources. The District has committed to be the administrator of the HCP. The 9-year length of commitment to the HCP process by the permittees demonstrates their willingness to proceed with this new HCP and the likelihood of implementation of the measures and strategies contained therein.

There are an estimated 304 ac (123 ha) of woody riparian habitat impacted by the HCP's covered activities that will be mitigated at about a 1:1 ratio by the applicants. Mitigation will be in the form of conservation easements, habitat restoration and enhancements, and management agreements. The majority of covered activities are expected to impact narrow or otherwise marginal habitat for the western yellow-billed cuckoo. Consequently, mitigation measures will likely conserve, restore, or enhance habitat, resulting in an increase of higher quality habitat over impacted habitat. Both compliance and effectiveness monitoring are built into the HCP. Valley-wide habitat monitoring, as well as parcel-specific habitat monitoring and species monitoring, will be conducted and used to determine if management needs to be adapted to successfully mitigate covered activities and maintain habitat into the future.

We will consider excluding all non-Federal HCP lands in proposed critical habitat units CO–6 and CO–7 totaling 18,407 ac (7,449 ha) from final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act. We encourage any public comments in relation to this consideration.

San Luis Valley Partnerships

The San Luis Valley has many proactive conservation efforts underway that protect and enhance wetland and riparian habitat, and will contribute to the conservation and enhancement of habitat for the western yellow-billed cuckoo. These efforts include, but are not limited to, voluntary incentive-based conservation programs for private land by the Colorado Parks and Wildlife and the Service's Partners for Fish and Wildlife Program. The Rio Grande Initiative has raised more than $10 million in Federal, State, and private funding, and has protected over 18 properties and 13,600 ac (5,506 ha) of land along the Rio Grande (not including lands in Mineral County). Conservation successes have included the 585-ac (237-ha) River Valley Ranch I near the 1,025-ac (415- ha) Rio Grande/Shriver-Wright State Wildlife Area, the Gilmore Ranch near Alamosa, and the 3,200-ac (1,296-ha) Cross Arrow Ranch at the confluence of the Rio Grande and Conejos River (adjacent to the BLM's McIntire-Simpson property) (Butler 2010). Other conservation actions include the establishment of BLM's Rio Grande Natural Area along a 33-mi (53-km) stretch of the Rio Grande from the southern boundary of the Alamosa NWR to the New Mexico State line, extending 0.25 mi (0.4 km) on either side of the river, although this area is outside proposed critical habitat.

As a result of multiple fundraising efforts by various public and private entities that operate in the San Luis Valley, as of October 2011, over 32,000 ac (12,955 ha) of land and 1,762 ac (713 ha) of riparian habitat in the HCP area have been protected by conservation easements (see Tables 1 and 2), although only a portion lies within the area proposed for western yellow-billed cuckoo critical habitat designation. Approximately 1,500 ac (607 ha) of riparian habitat are under permanent conservation easement along the Rio Grande and Conejos River (Shoemaker 2012, *in litt.*). The easements prohibit any activity that alters or diminishes the value of the wildlife habitat.

We will consider excluding all lands under permanent conservation easement within the proposed critical habitat units CO–6 and CO–7 from final western yellow-billed cuckoo critical habitat designation under section 4(b)(2) of the Act. These same lands are also being considered for exclusion based on their inclusion in the San Luis Valley Regional HCP. We encourage any public comments in relation to this consideration.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the western yellow-billed cuckoo (Industrial Economics Incorporated (IEc) 2013a; IEc 2013b). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in incremental economic impacts. In particular, the screening analysis considers baseline impacts (i.e., impacts absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether any unoccupied units may require additional management or conservation efforts as a result of the critical habitat designation and whether the units may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis of the proposed critical habitat designation for the western yellow-billed cuckoo and are summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the western yellow-billed

cuckoo, first we identified, in the IEM dated June 19, 2013, probable incremental economic impacts associated with the following categories of activities: (1) Water management, including hydropower operations; (2) restoration and conservation projects; (3) fire management; (4) transportation activities, including bridge construction; (5) recreation activities; (6) livestock grazing and agriculture; (7) mining; (8) residential and commercial development; and (9) border protection activities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement as the designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the western yellow-billed cuckoo is present, Federal agencies will already be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector would not likely be a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards). Because the designation of critical habitat for the western yellow-billed cuckoo is being proposed nearly concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the western yellow-billed cuckoo would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

Except in limited instances, which the Service cannot predict at this time, project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy. Notwithstanding the low probability of such limited instances occurring, when the Service completes a consultation for the western yellow-billed cuckoo within critical habitat, that consultation will evaluate whether that project would result in adverse modification.

The Service is not proposing to designate areas outside of the geographical area occupied by the species as critical habitat. All of the proposed units are occupied by the western yellow-billed cuckoo during their breeding season. Occupied breeding habitat is considered by the Service to be occupied year-round for the evaluation of project-related effects that degrade habitat quality. An evaluation of consultations for other riparian obligate listed migratory bird species that occupy some of the same areas (i.e., southwestern willow flycatcher and least Bell's vireo) informs the Service that project modifications intended to address adverse project effects focus primarily on various habitat restoration and conservation mechanisms, whether the adverse effects are upon members of the listed species or its designated critical habitat. We anticipate that these mechanisms overlap because the impacts in either case will most likely be affecting the persistence, development, and recycling of habitat. The result is that the application of such measures is anticipated to simultaneously remove jeopardy and adverse modification outcomes.

Therefore, only administrative costs are expected in the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The proposed critical habitat designation for the western yellow-billed cuckoo includes 80 units in nine western States: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Texas, Utah, and Wyoming. A total of 546,335 ac (221,094 ha) are proposed of which 193,691 ac (78,370 ha) are being considered for exclusions. Approximately 32 percent of the proposed total acreage is Federal land, 9 percent is State land, 13 percent is owned by Tribal entities, and 46 percent is privately owned or owned by local government entities. All proposed critical habitat units are considered to be occupied.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on Tribal or private lands. However, based on coordination efforts with Tribal partners and State and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than $5,000 per formal consultation effort) and, therefore, would not be significant.

The probable incremental economic impacts of the western yellow-billed cuckoo critical habitat designation are expected to be limited to additional administrative effort, as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to the proposed critical habitat being considered occupied by the species, and incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely. At approximately $5,000 or less per formal consultation, in order to reach the threshold of $100 million of incremental administrative impacts in a single year, critical habitat designation would have to result in more than 20,000 formal consultations in a single year. It is possible that 100 formal consultations will be needed in the first year after listing and fewer will be needed in subsequent years. Thus, the annual administrative burden from formal consultations will most likely not exceed $500,000 in any given year. The total incremental effect of administrative cost for all activities (including technical assistance, informal consultations, and programmatic consultations) are estimated to be a maximum of $3.2 million annually. Therefore, future probable incremental economic impacts are not likely to exceed $100 million in any single year, and disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

As we stated earlier, we are soliciting data and comments from the public on

the economic screening analysis, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule a public hearing on this proposal, if any are requested, and announce the dates, times, and places of any hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will raise novel legal or policy issues.

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

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete

examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. As such, certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect that the proposed critical habitat designation for the western yellow-billed cuckoo would significantly affect energy supplies, distribution, or use, as the areas identified as proposed critical habitat are along riparian corridors in mostly remote areas with little energy supplies, distribution, or infrastructure in place. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the western yellow-billed cuckoo in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the western yellow-billed cuckoo does not pose significant takings implications. However, we will further evaluate this issue as we develop our final designation, and review and revise this assessment as warranted.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California, Arizona, New Mexico, Texas, Colorado, Utah, Nevada, Idaho, and Wyoming. Because the species is concurrently being listed under the Act, the designation of critical habitat in areas currently occupied by the western yellow-billed cuckoo may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may

affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the western yellow-billed cuckoo within the proposed designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of western yellow-billed cuckoo, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is has been completed.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. The following tribes are identified in the proposed designation: Fort Mojave Indian Tribe; Colorado River Indian Reservation; Fort Yuma Indian Reservation; Cocopah Tribe; Yavapai-Apache Nation; San Carlos Reservation; Navajo Nation; Santa Clara, San Juan, and San Ildefonso Pueblos; Cochiti, Santo Domingo, San Felipe, Sandia, Santa Ana and Isleta Pueblos; Shoshone-Bannock, Fort Hall Reservation; the Colusa Wintun Tribe; and the Ute Tribe, Uinta and Ouray Reservation. We will be working with the tribes identified above throughout the process of listing and designating critical habitat for the western yellow-billed cuckoo.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.95(b) by adding an entry for ''Yellow-billed Cuckoo (*Coccyzus americanus*), Western DPS'' immediately following the entry for ''Mariana Crow (*Corvus kubaryi*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Yellow-billed Cuckoo (*Coccyzus americanus*), Western DPS

(1) Critical habitat units are depicted for Arizona, California, Colorado, Idaho, New Mexico, Nevada, Texas, Utah, and Wyoming, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the

conservation of western yellow-billed cuckoo consist of three components:

(i) *Riparian woodlands.* Riparian woodlands with mixed willow-cottonwood vegetation, mesquite-thorn-forest vegetation, or a combination of these that contain habitat for nesting and foraging in contiguous or nearly contiguous patches that are greater than 325 feet (100 meters) in width and 200 acres (81 hectares) or more in extent. These habitat patches contain one or more nesting groves, which are generally willow-dominated, have above average canopy closure (greater than 70 percent), and have a cooler, more humid environment than the surrounding riparian and upland habitats.

(ii) *Adequate prey base.* Presence of a prey base consisting of large insect fauna (for example, cicadas, caterpillars, katydids, grasshoppers, large beetles, dragonflies) and tree frogs for adults and young in breeding areas during the nesting season and in post-breeding dispersal areas.

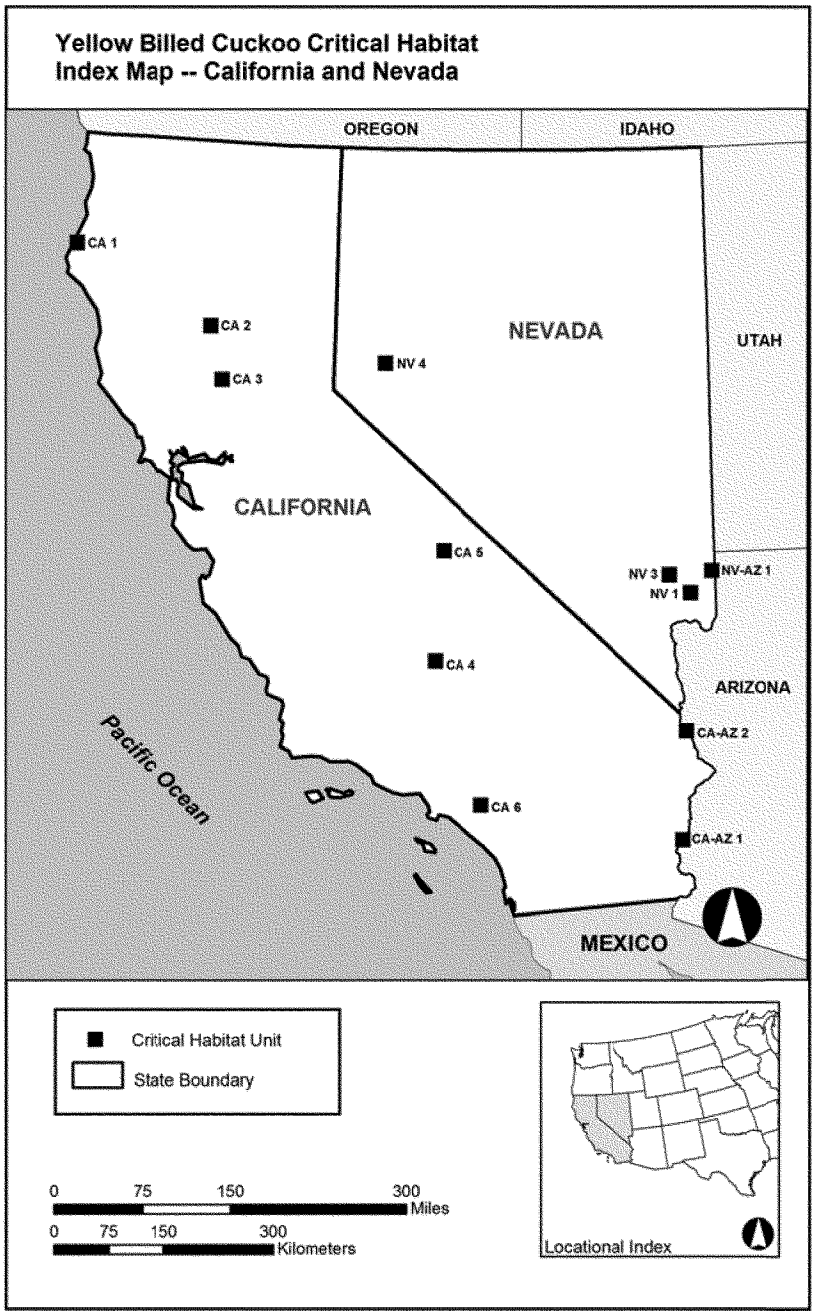
(iii) *Dynamic riverine processes.* River systems that are dynamic and provide hydrologic processes that encourage sediment movement and deposits that allow seedling germination and promote plant growth, maintenance, health, and vigor (e.g. lower gradient streams and broad floodplains, elevated subsurface groundwater table, and perennial rivers and streams). This allows habitat to regenerate at regular intervals, leading to riparian vegetation with variously aged patches from young to old. These dynamic riverine processes are considered essential for developing and maintaining the primary constituent elements provided in paragraphs (2)(i) and (2)(ii) of this entry.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

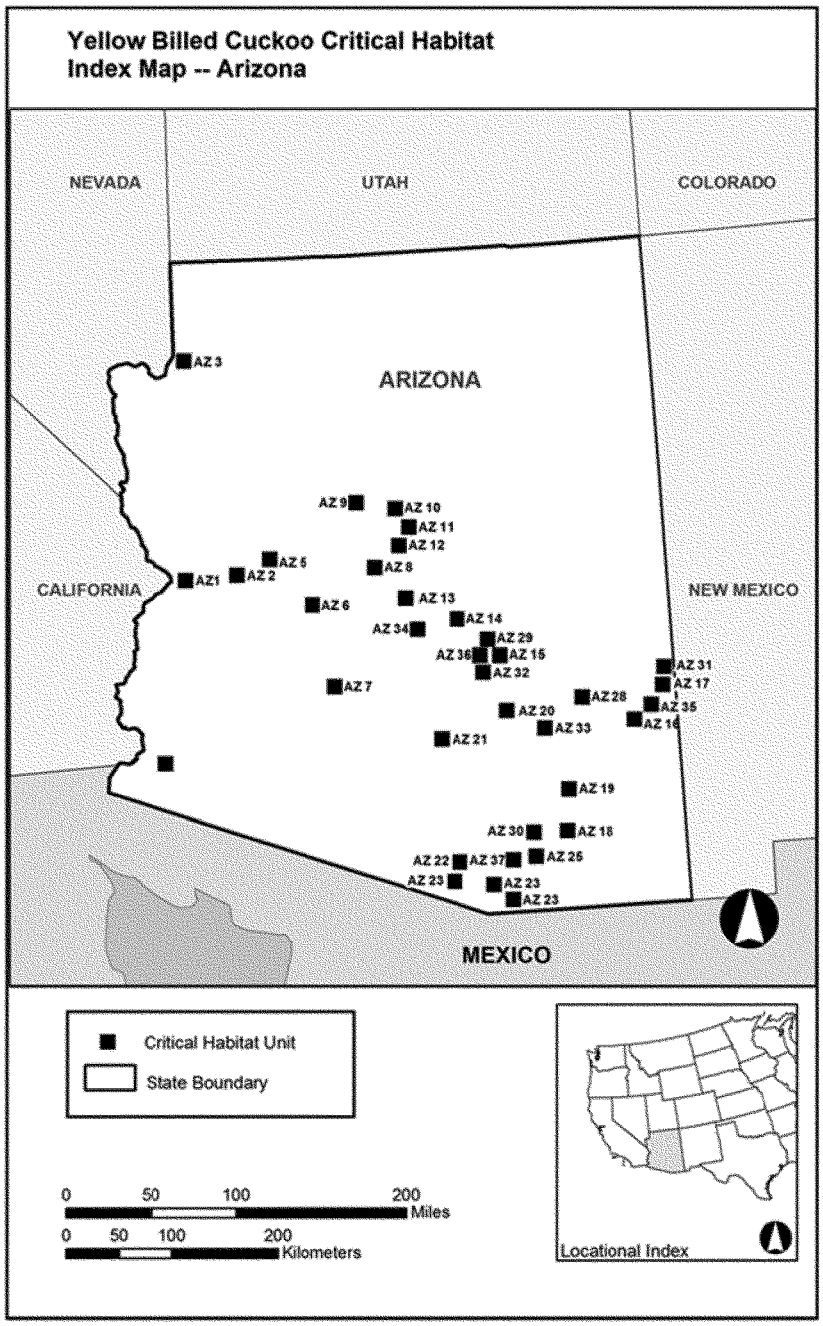
(4) *Critical habitat map units.* Data layers defining map units were created on a base of the Natural Resource Conservation Service National Agriculture Imagery Program (NAIP 2011), and critical habitat was then mapped using North American Datum (NAD) 83, Universal Transverse Mercator Zone 10N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Sacramento Fish and Wildlife Office's internet site at *http://www.fws.gov/sacramento,* or on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0011. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map for California and Nevada follows:

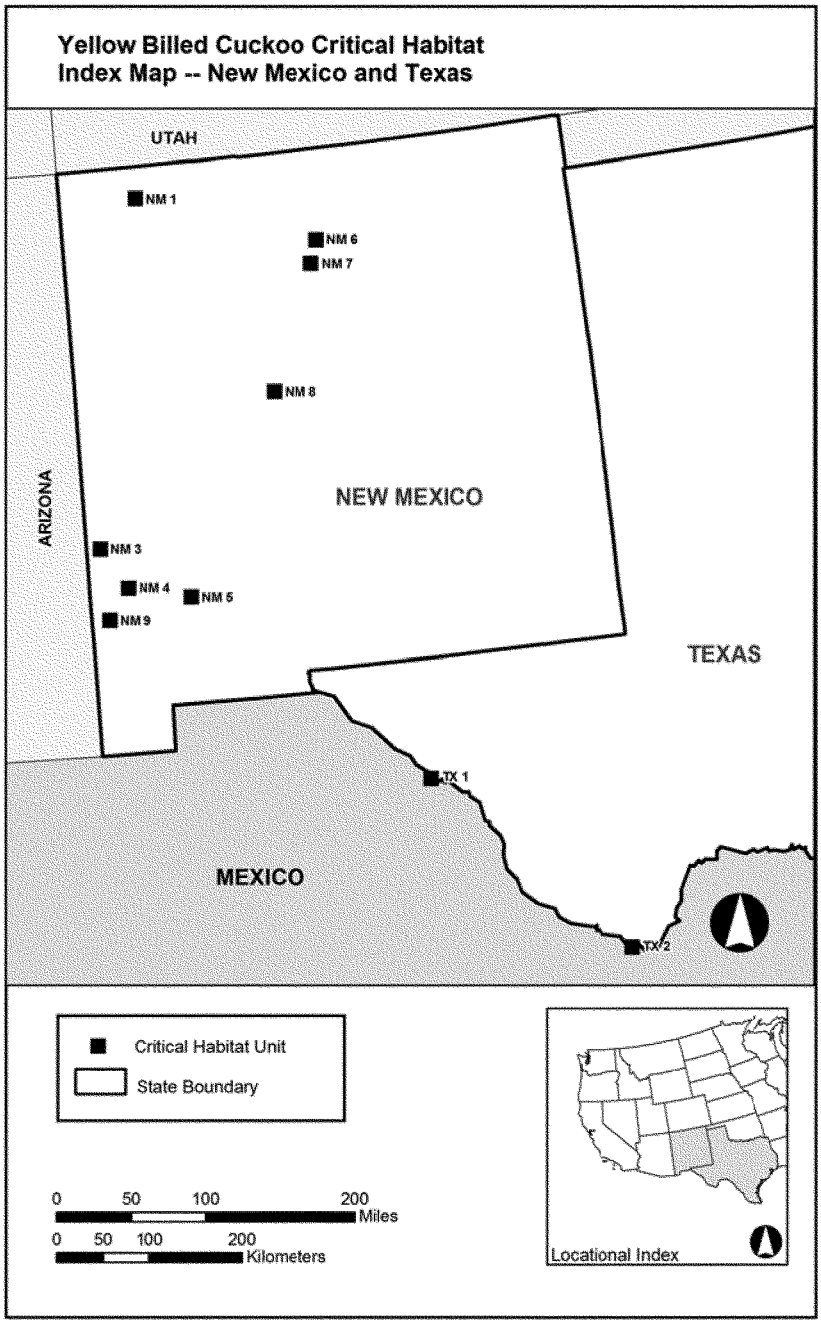
BILLING CODE 4310–55–P



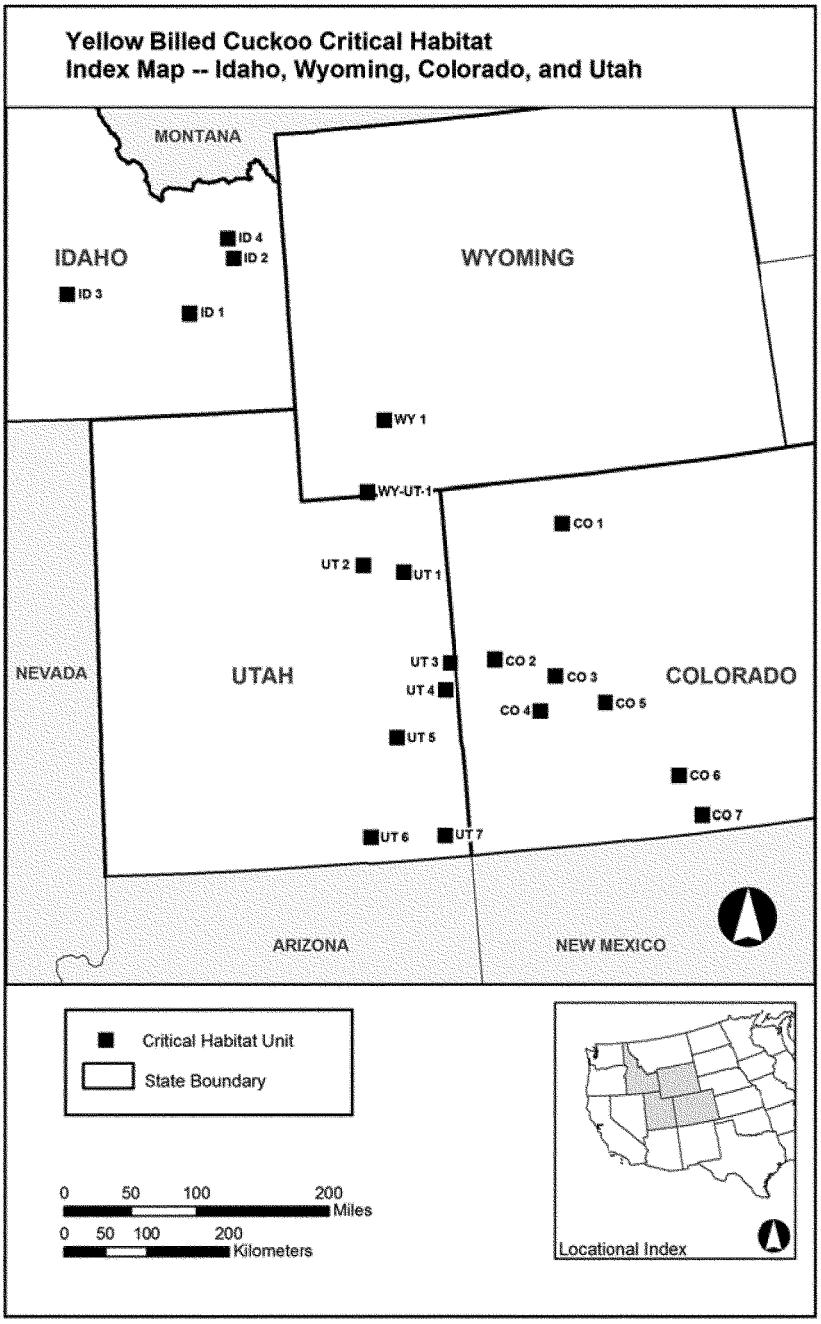
(6) Index map for Arizona follows:



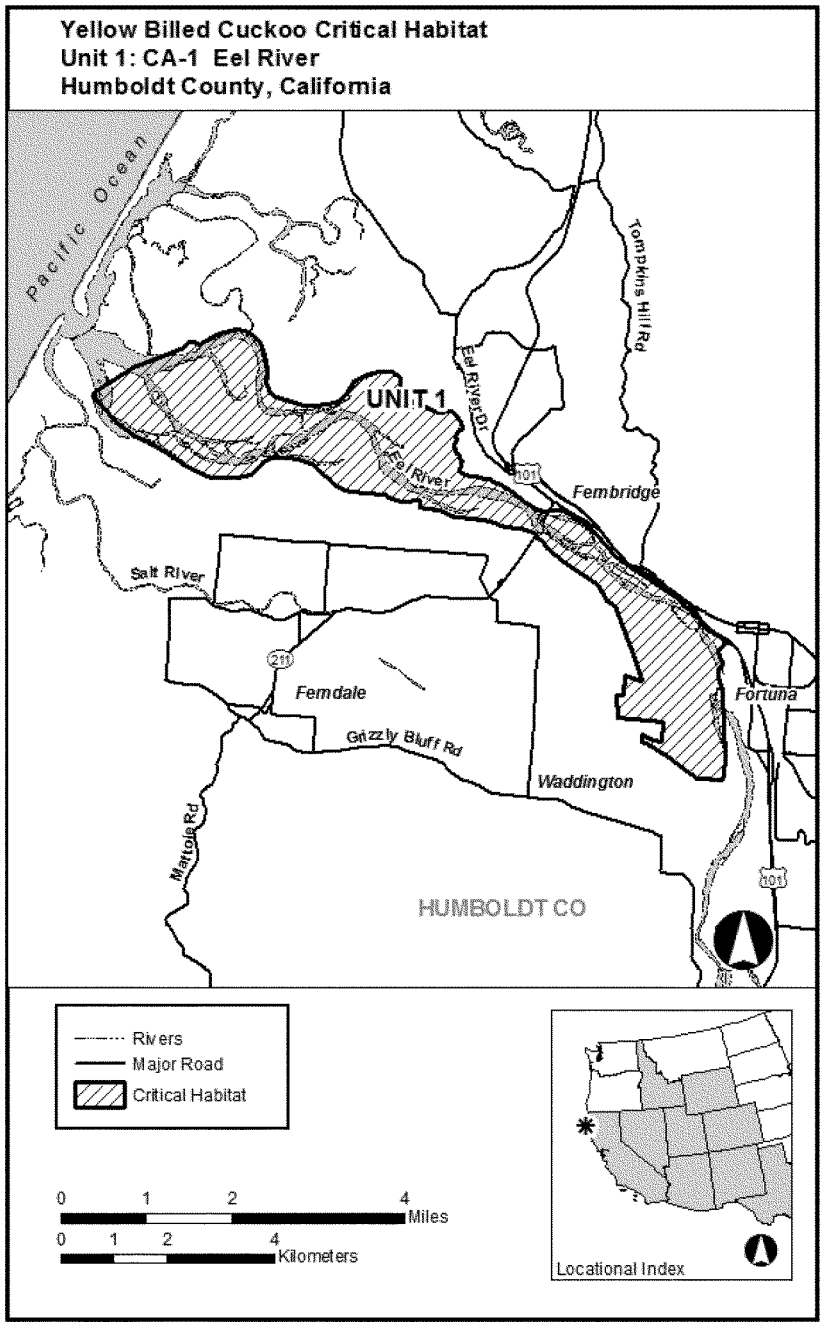
(7) Index map for New Mexico and Texas follows:



(8) Index map for Idaho, Wyoming, Colorado, and Utah follows:

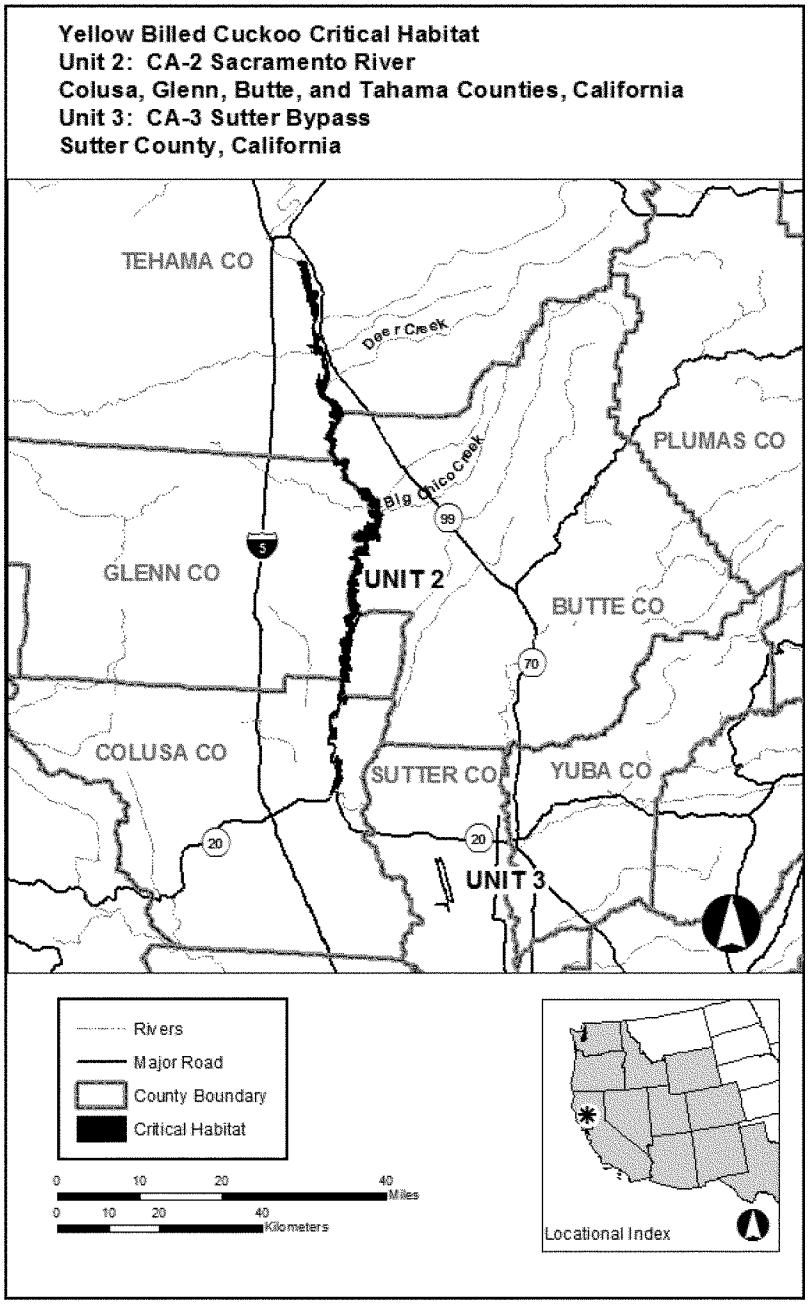


(9) Unit 1: CA–1, Eel River; Humboldt County, California. Map of Unit 1 follows:

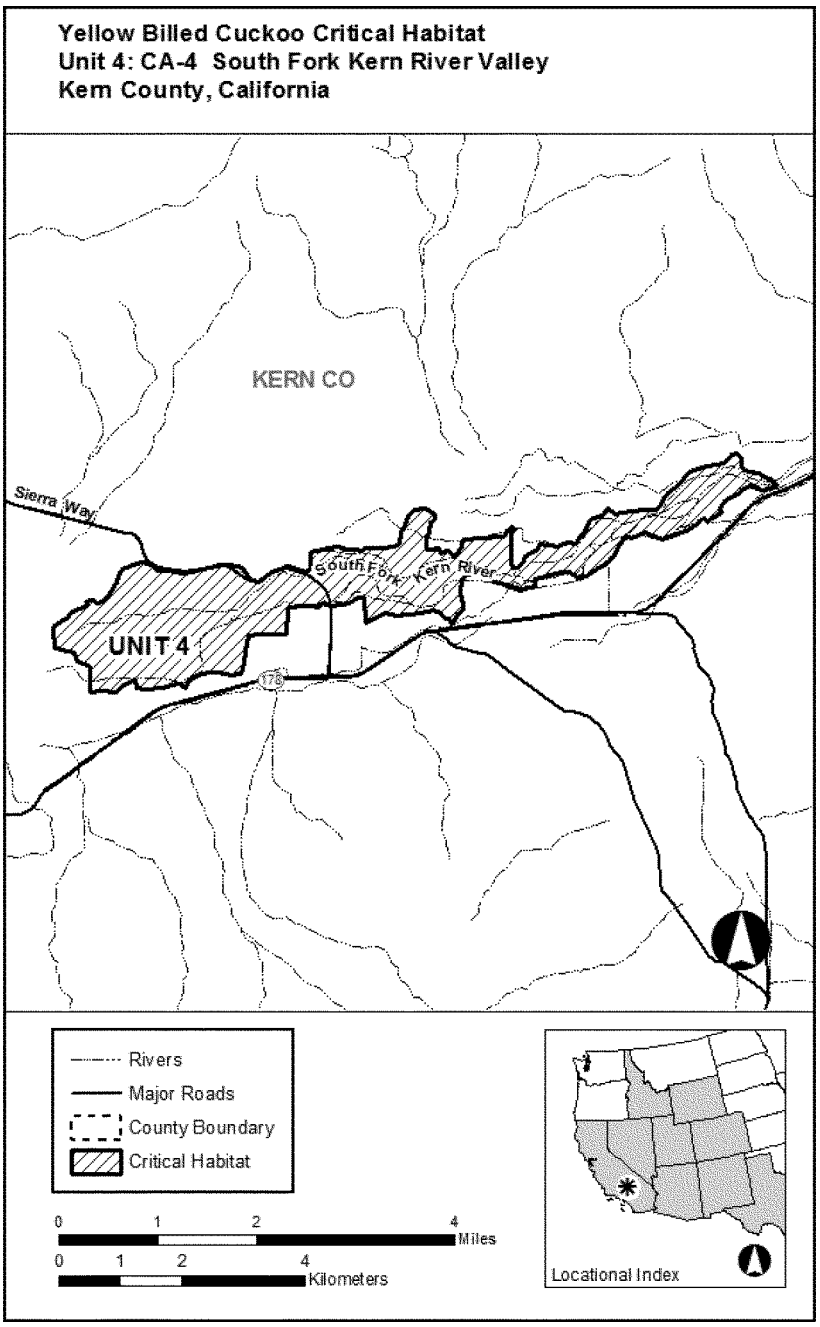


(10) Unit 2: CA–2, Sacramento River; Colusa, Glenn, Butte, and Tehama Counties, California. Map of Units 2 and 3 follows:

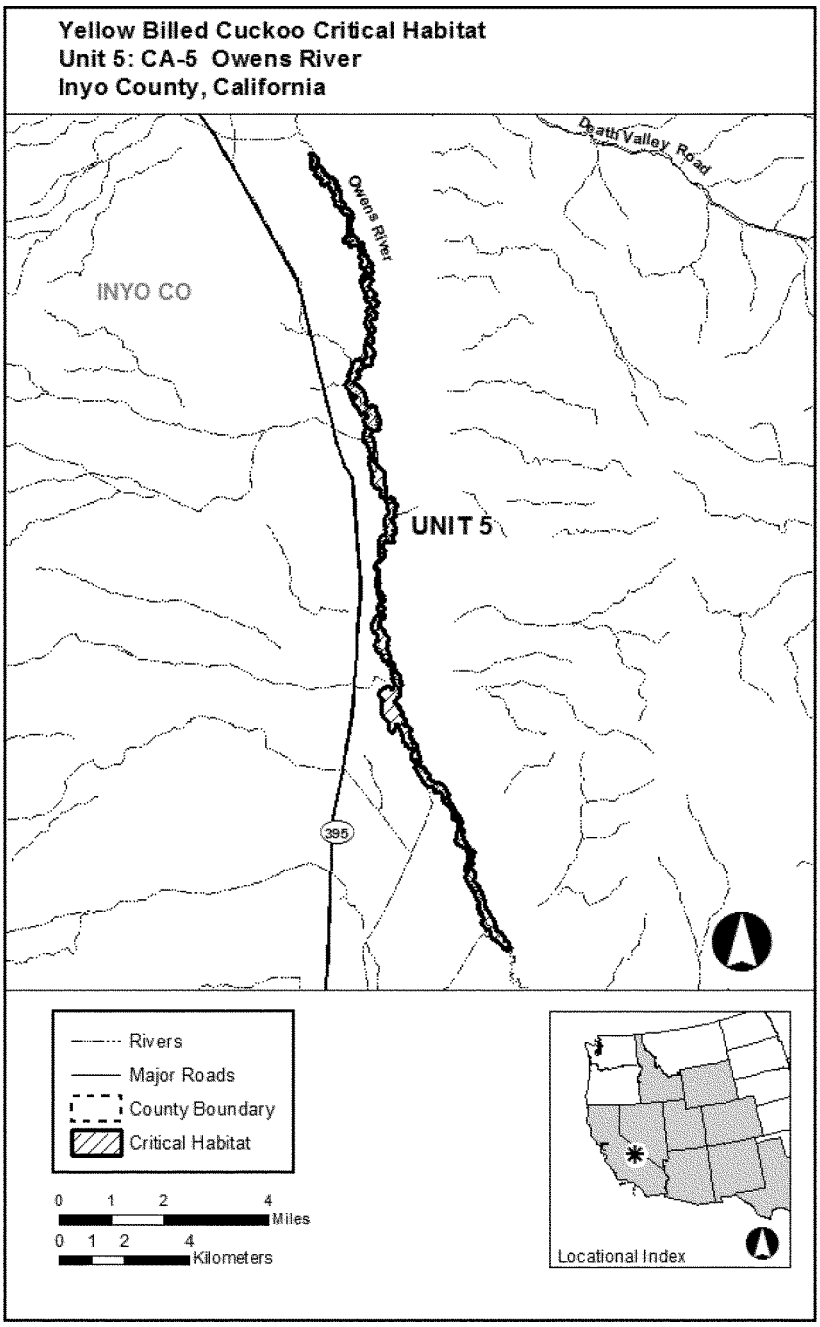
(11) Unit 3: CA–3, Sutter Bypass; Sutter County, California. Map of Unit 3 is provided at paragraph (10) of this entry.



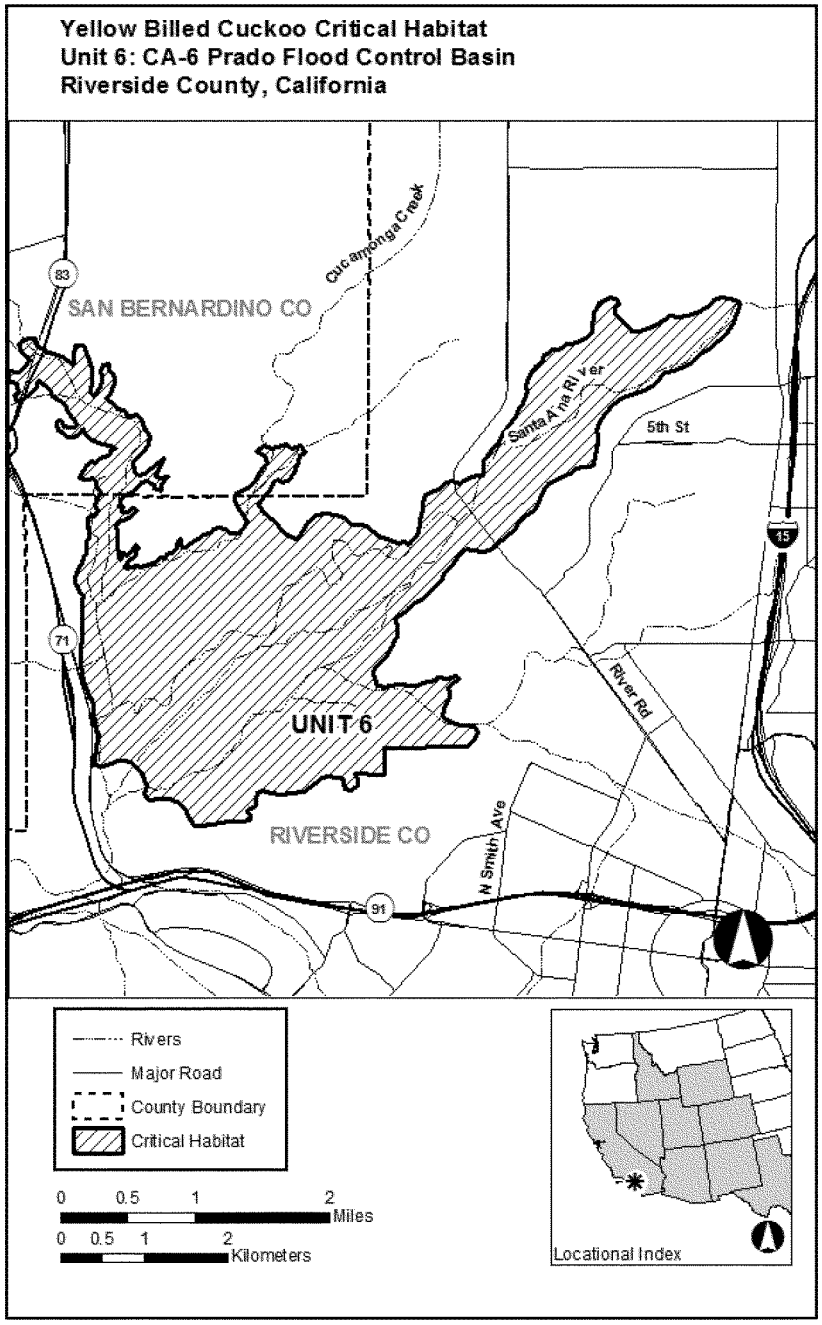
(12) Unit 4: CA–4, South Fork Kern River Valley; Kern County, California. Map of Unit 4 follows:



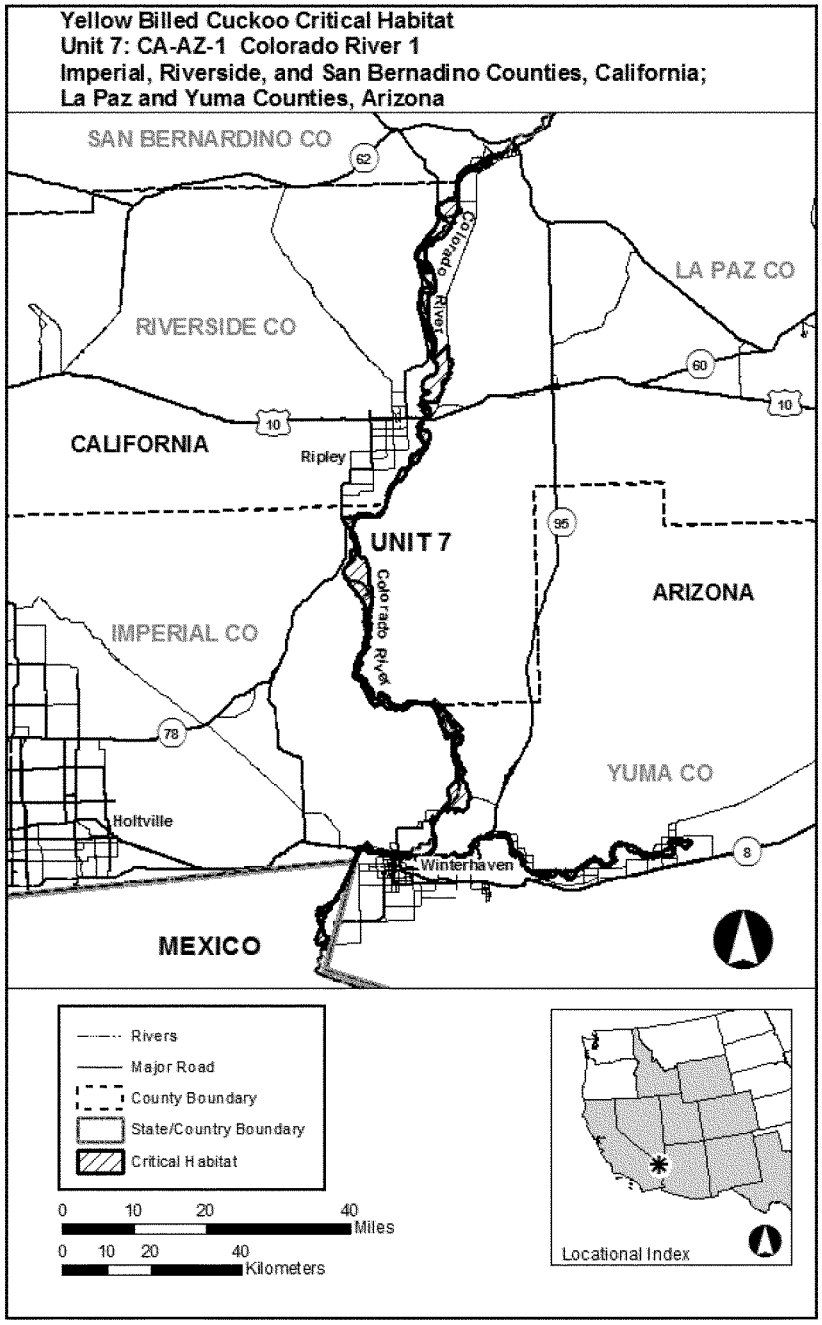
(13) Unit 5: CA–5, Owens River; Inyo County, California. Map of Unit 5 follows:



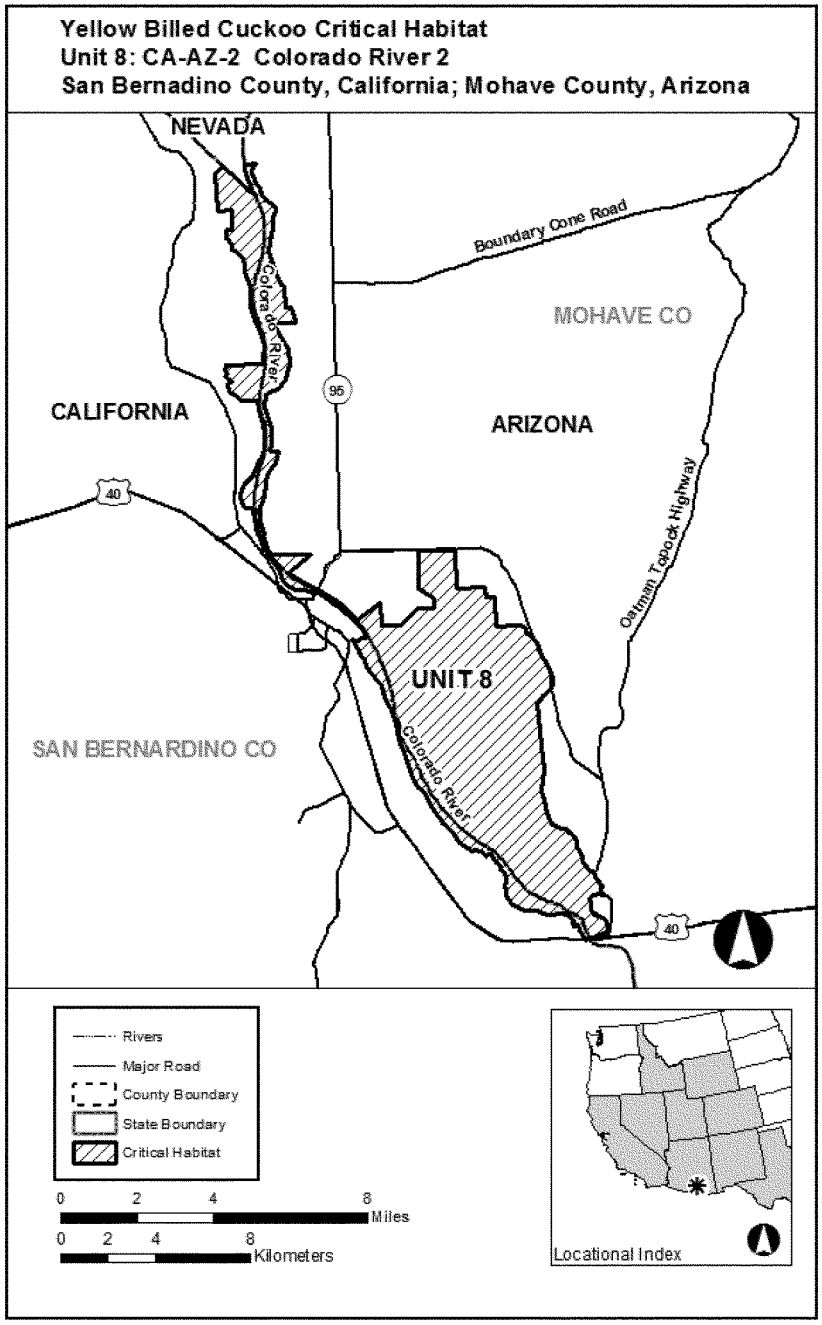
(14) Unit 6: CA–6, Prado Flood Control Basin; San Bernardino and Riverside Counties, California. Map of Unit 6 follows:



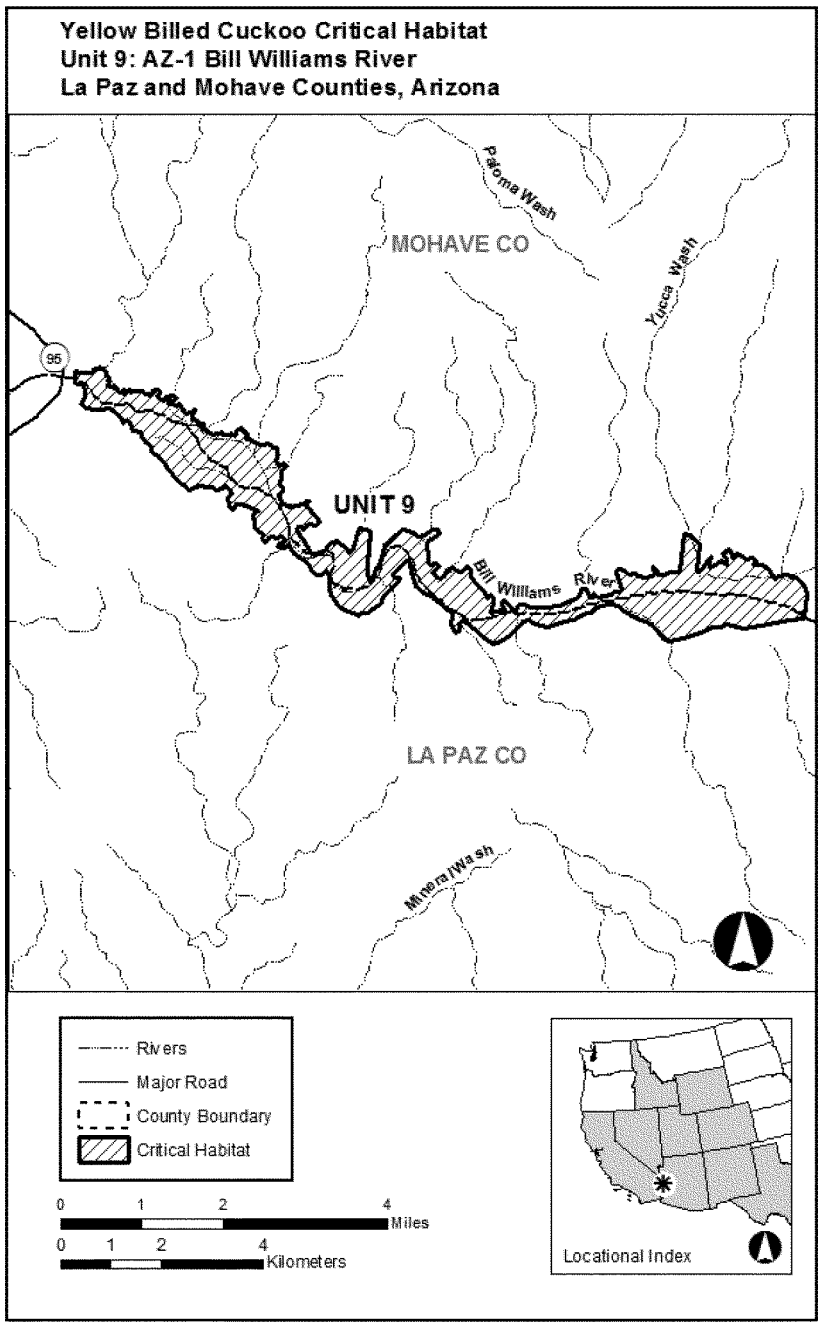
(15) Unit 7: CA/AZ–1, Colorado River 1; Imperial, Riverside, and San Bernardino Counties, California, and Yuma and La Paz Counties, Arizona. Map of Unit 7 follows:



(16) Unit 8: CA/AZ–2, Colorado River 2; San Bernardino County, California, and Mojave County, Arizona. Map of Unit 8 follows:

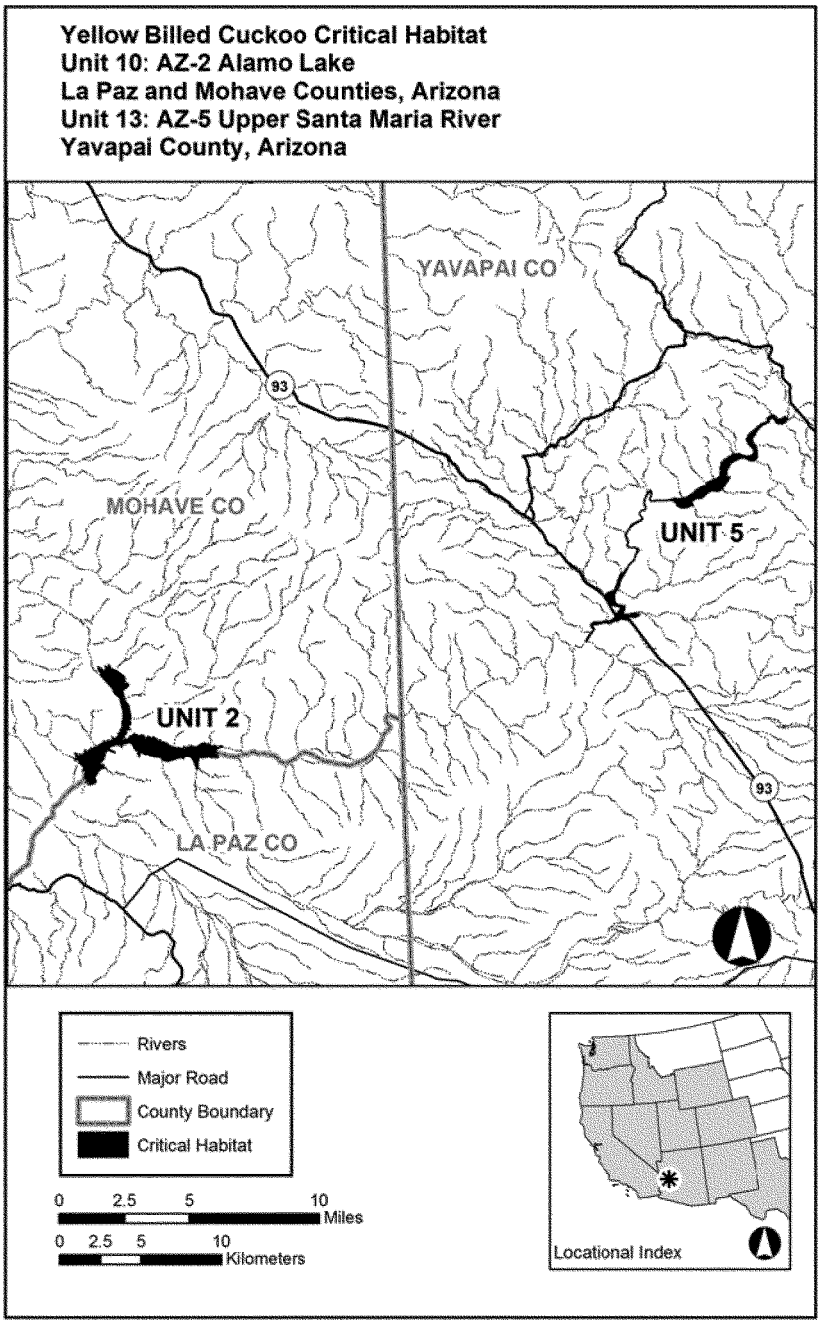


(17) Unit 9: AZ–1, Bill Williams River; Mojave and La Paz Counties, Arizona. Map of Unit 9 follows:

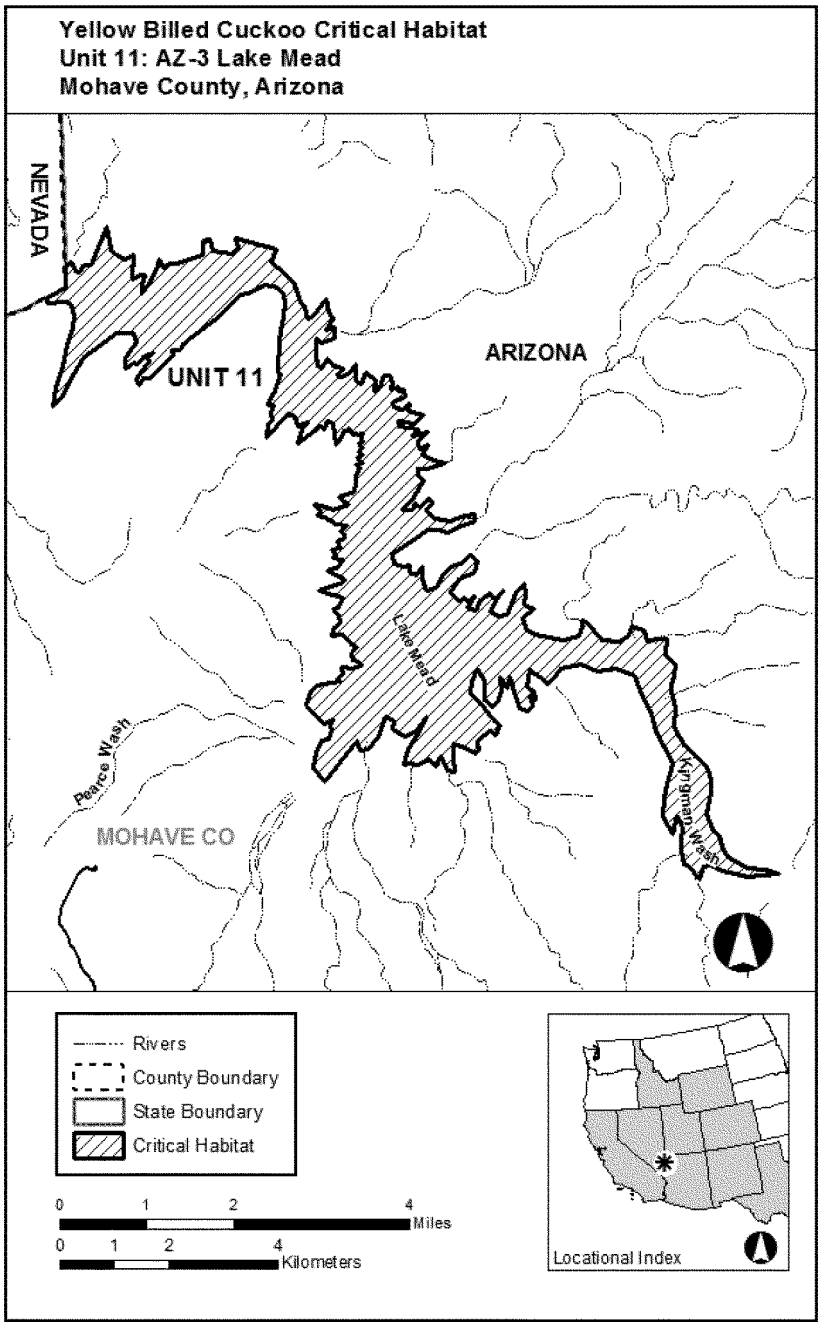


(18) Unit 10: AZ–2, Alamo Lake; Mojave and La Paz Counties, Arizona.

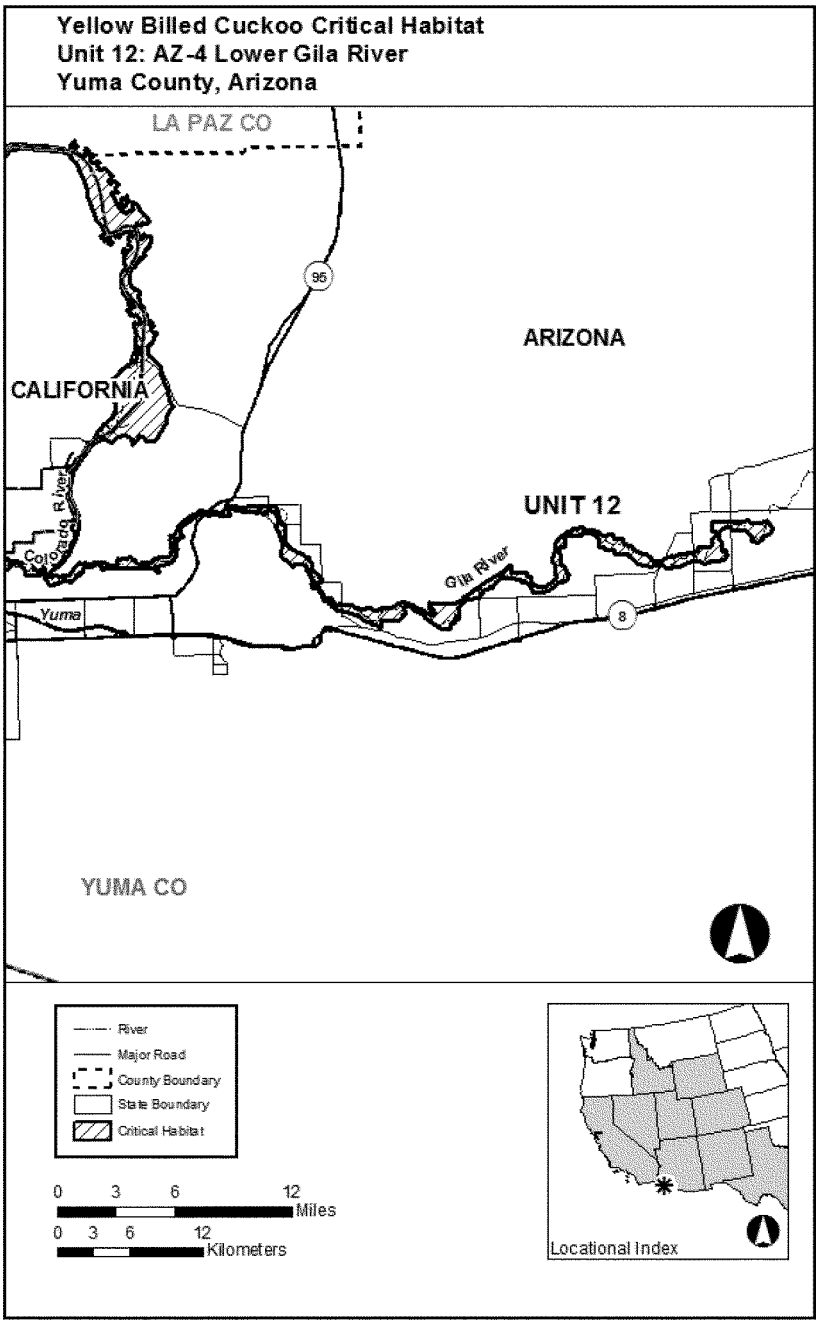
Map of Units 10 and 13 follows:



(19) Unit 11: AZ–3, Lake Mead; Mohave County, Arizona. Map of Unit 11 follows:

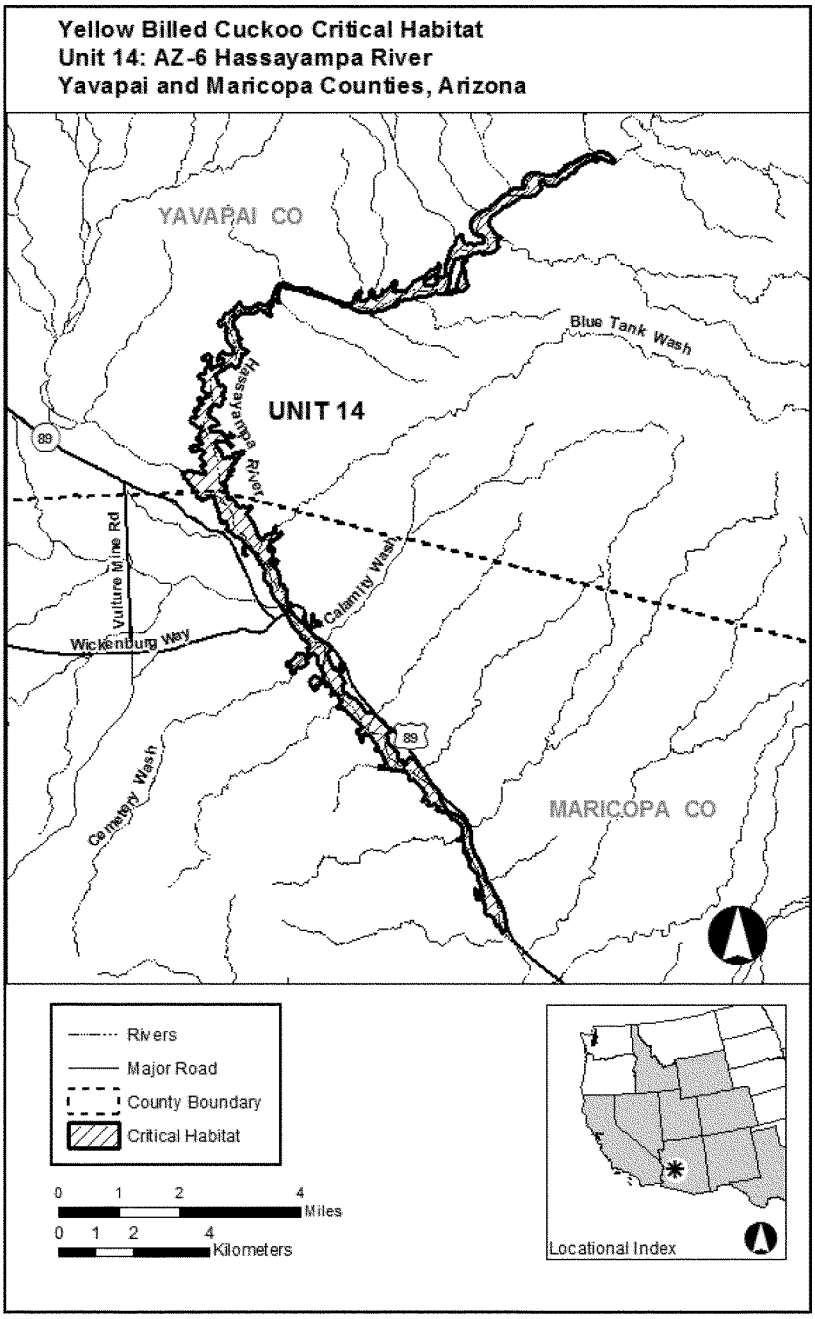


(20) Unit 12: AZ–4, Lower Gila River; Yuma County, Arizona. Map of Unit 12 follows:

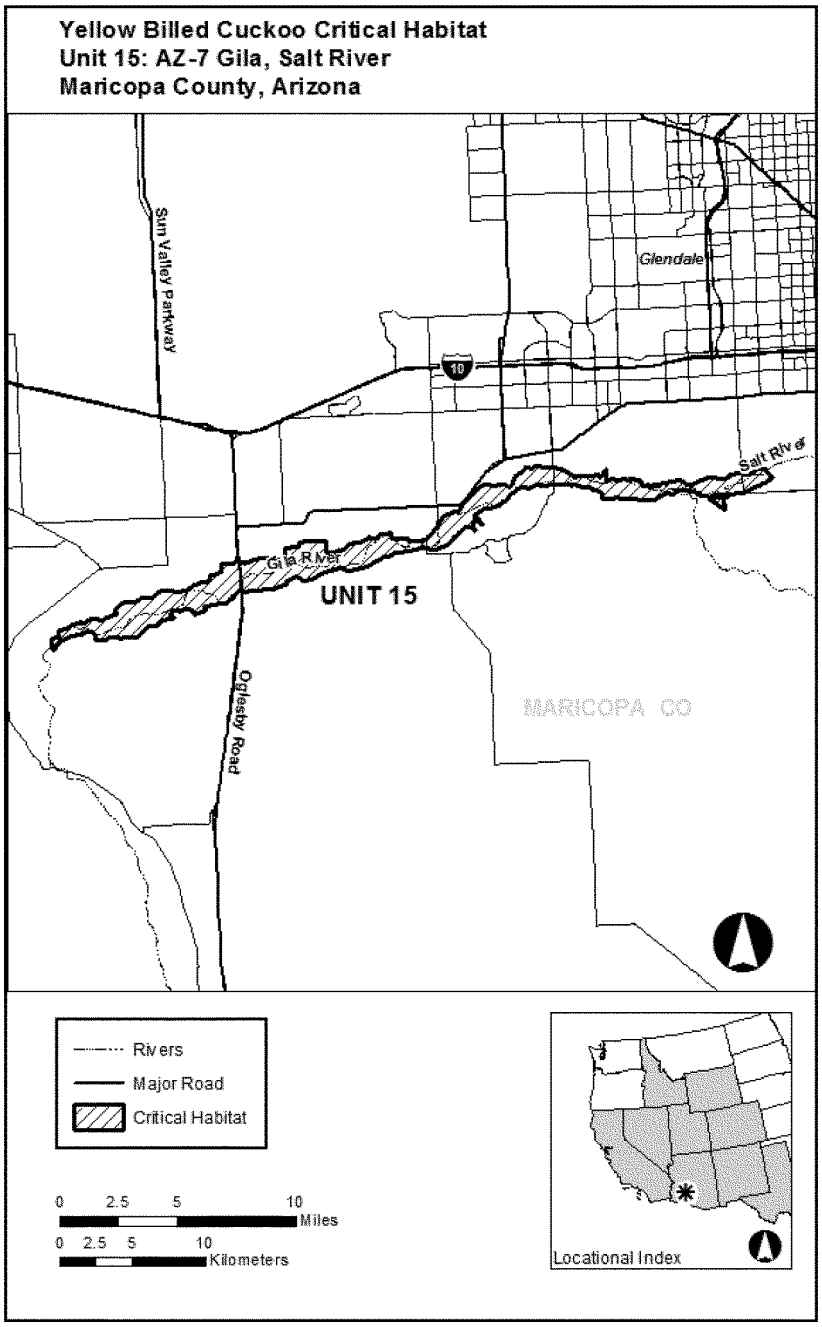


(21) Unit 13: AZ–5, Upper Santa Maria River; Yavapai County, Arizona. Map of Unit 13 is provided at paragraph (18) of this entry.

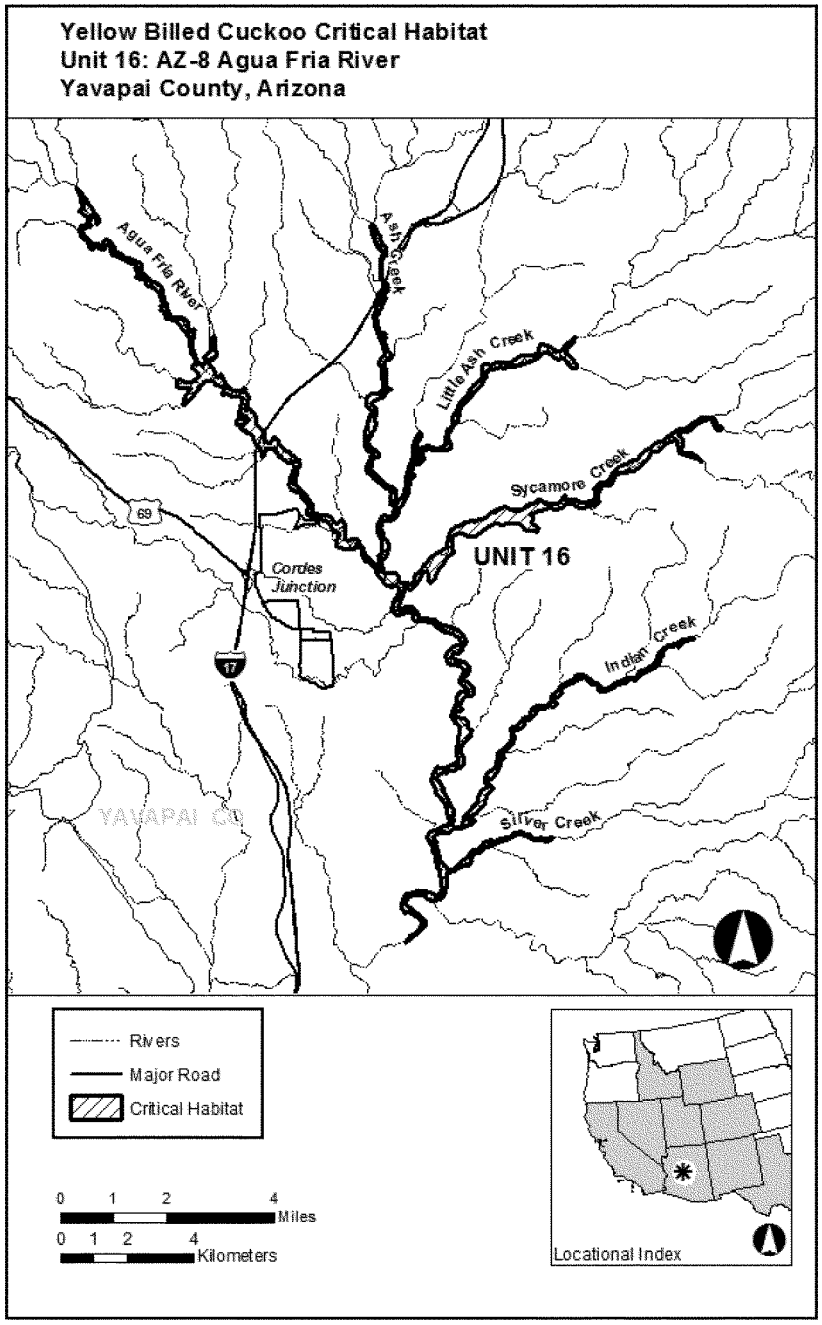
(22) Unit 14: AZ–6, Hassayampa River; Yavapai and Maricopa Counties, Arizona. Map of Unit 14 follows:



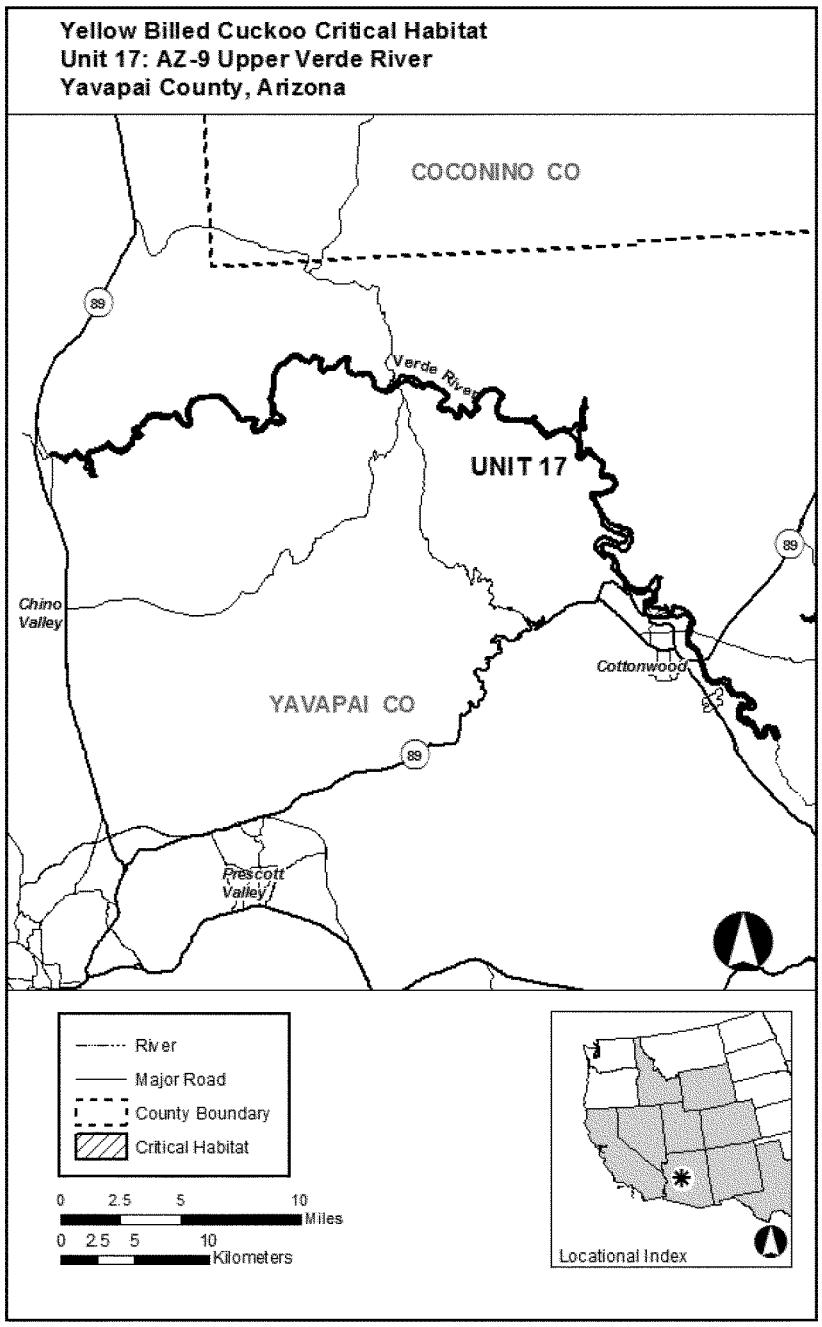
(23) Unit 15: AZ–7, Gila and Salt Rivers; Maricopa County, Arizona. Map of Unit 15 follows:



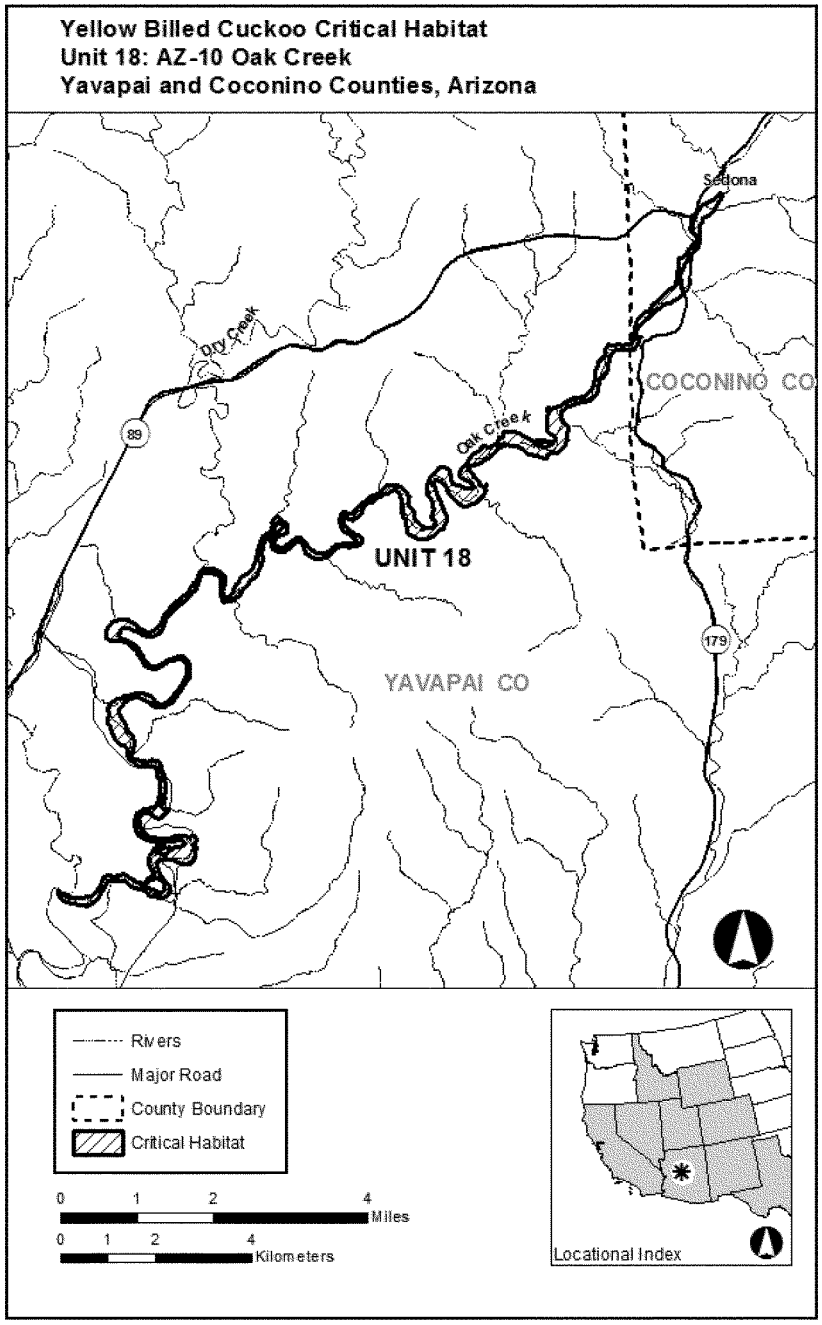
(24) Unit 16: AZ–8, Agua Fria River; Yavapai County, Arizona. Map of Unit 16 follows:



(25) Unit 17: AZ–9, Upper Verde River; Yavapai County, Arizona. Map of Unit 17 follows:

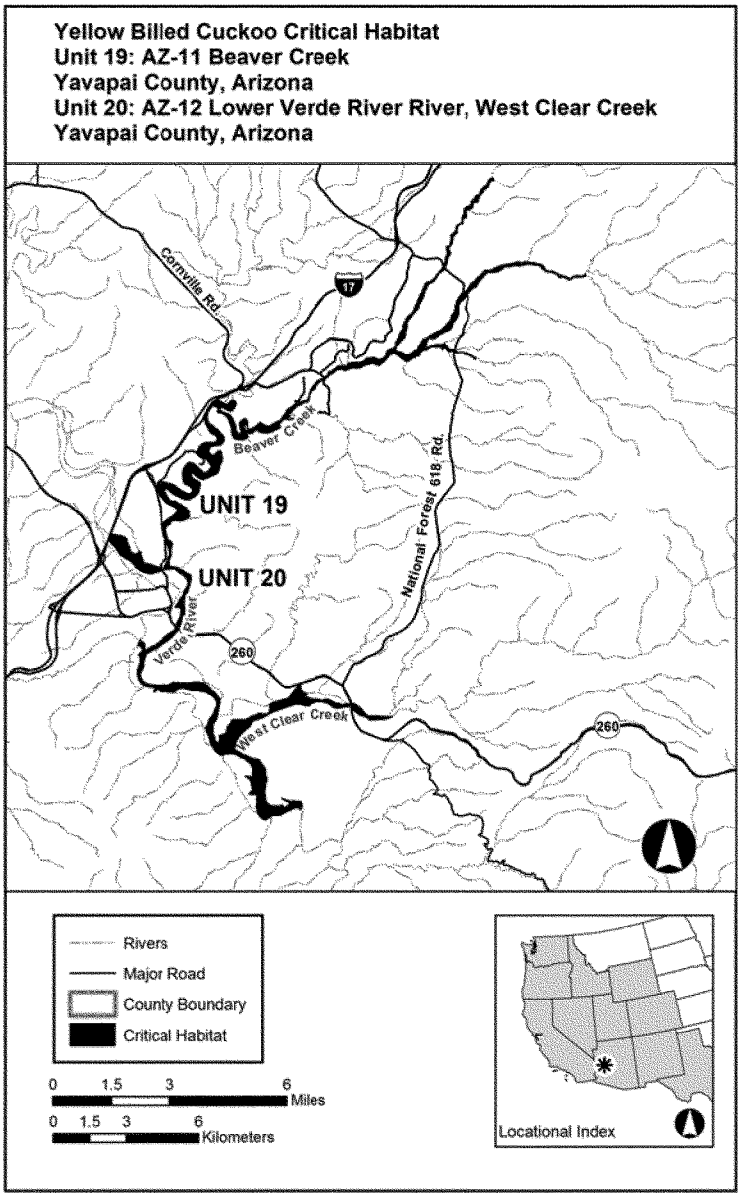


(26) Unit 18: AZ–10, Oak Creek; Yavapai and Coconino Counties, Arizona. Map of Unit 18 follows:

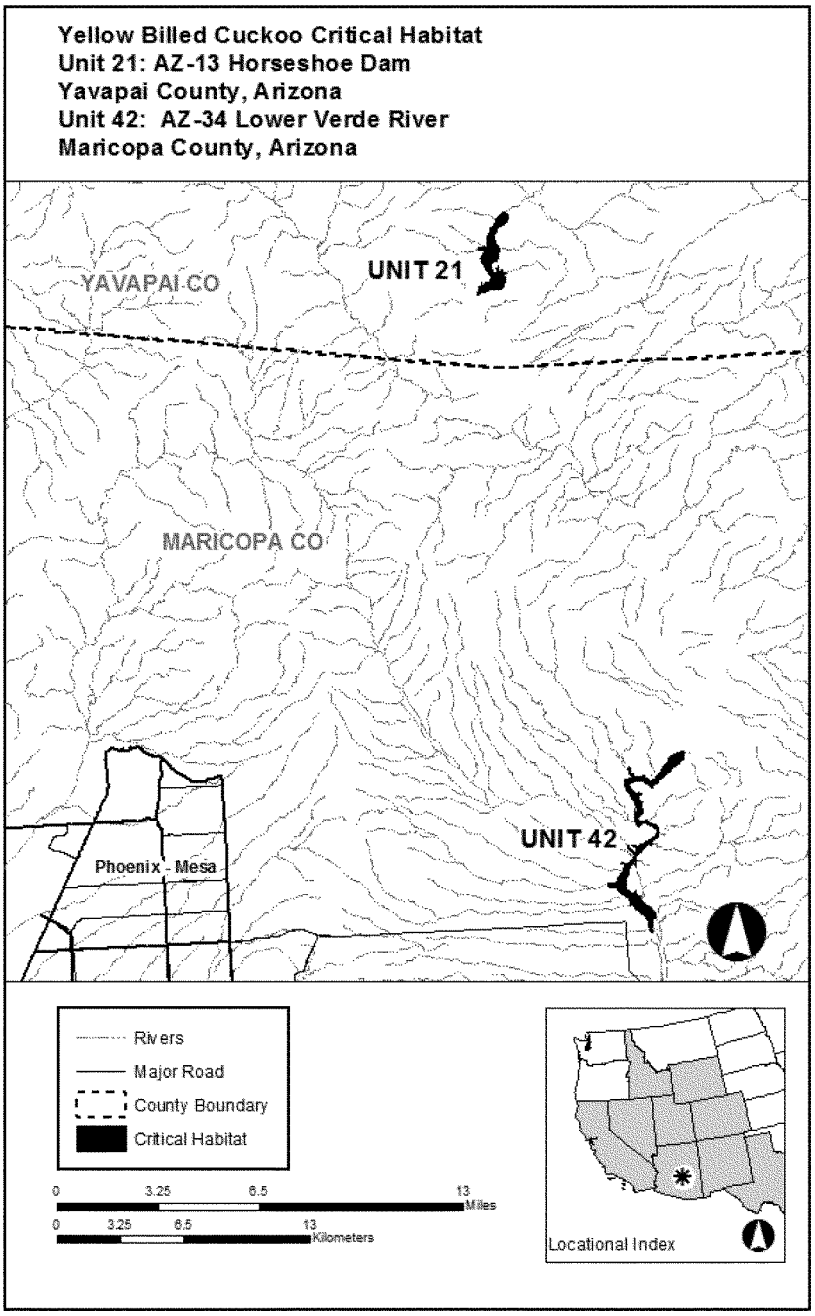


(27) Unit 19: AZ–11, Beaver Creek and tributaries; Yavapai County, Arizona. Map of Units 19 and 20 follows:

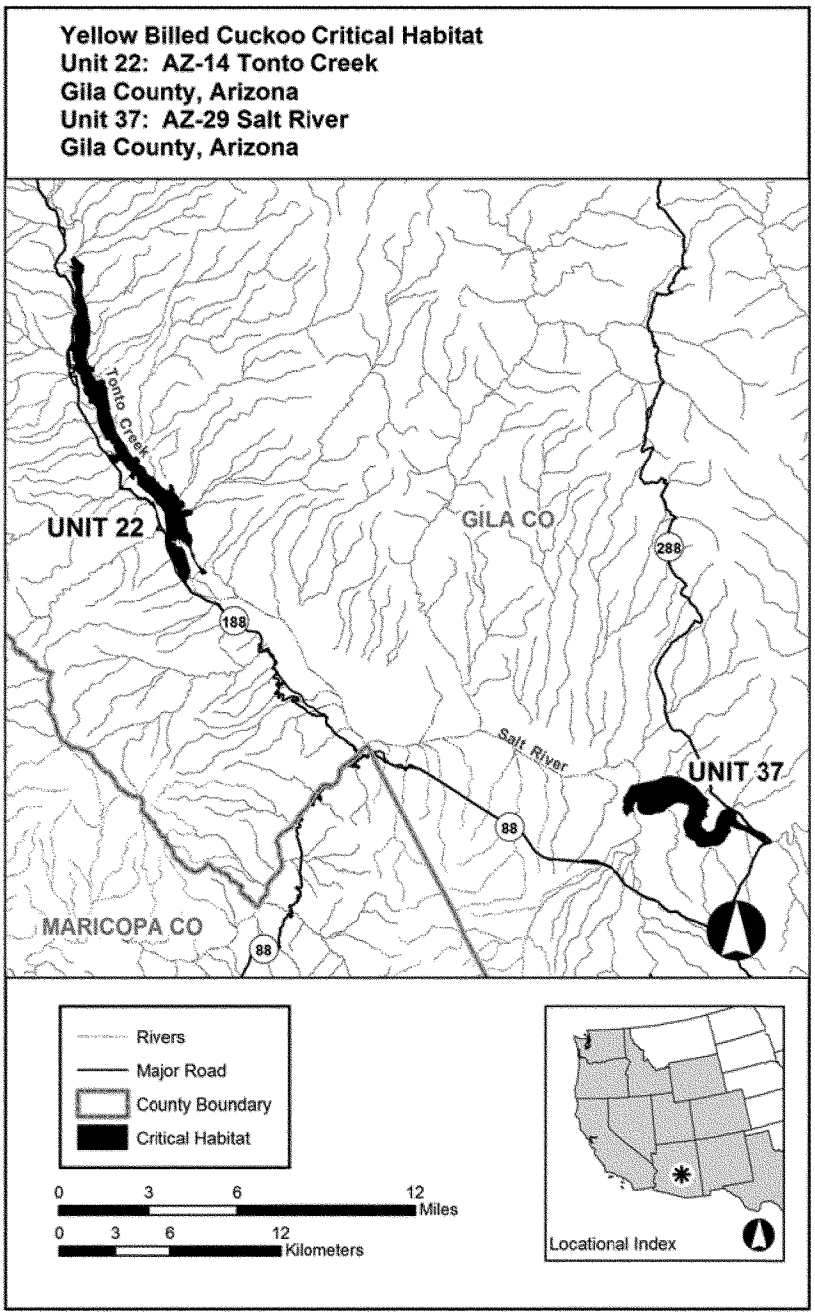
(28) Unit 20: AZ–12, Lower Verde River and West Clear Creek; Yavapai County, Arizona. Map of Unit 20 is provided at paragraph (27) of this entry.



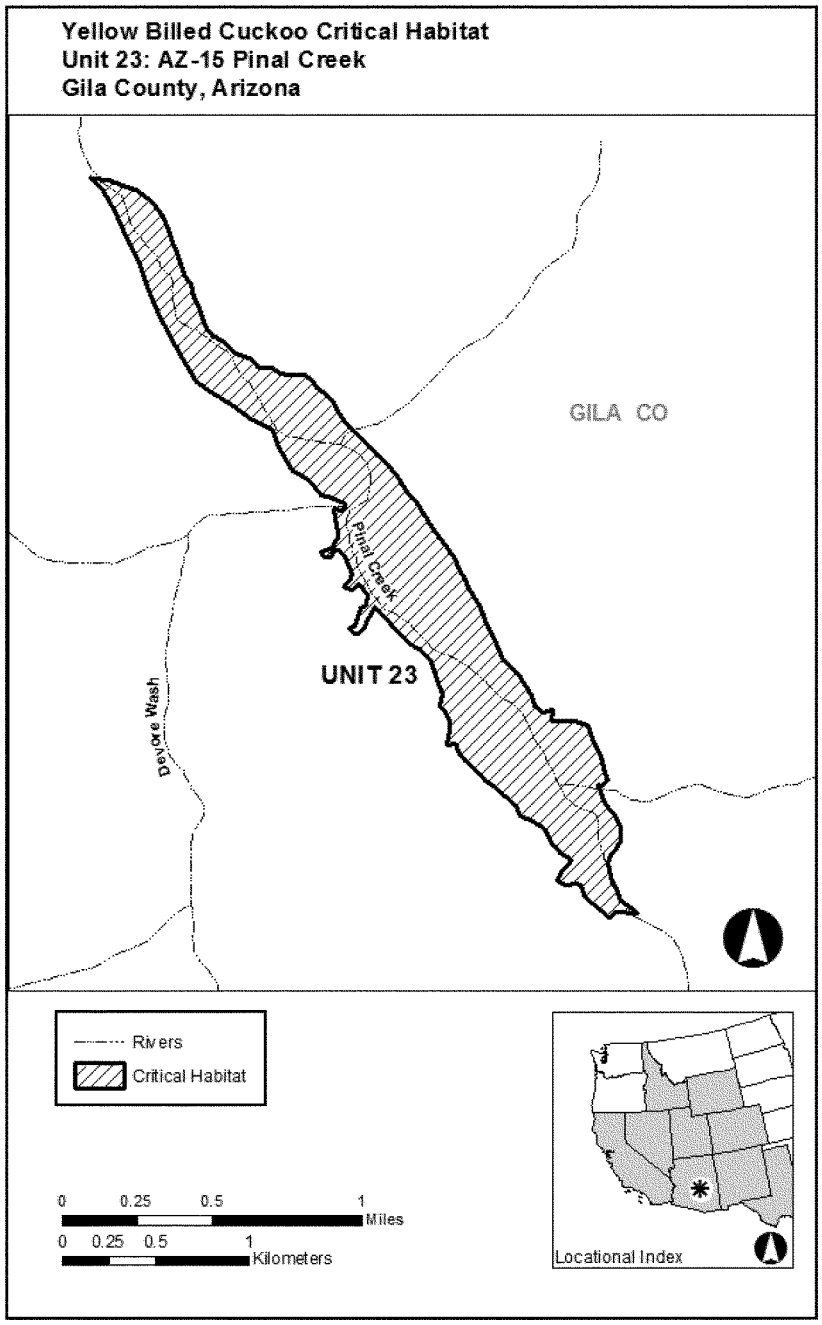
(29) Unit 21: AZ–13, Horseshoe Dam; Yavapai County, Arizona. Map of Units 21 and 42 follows:



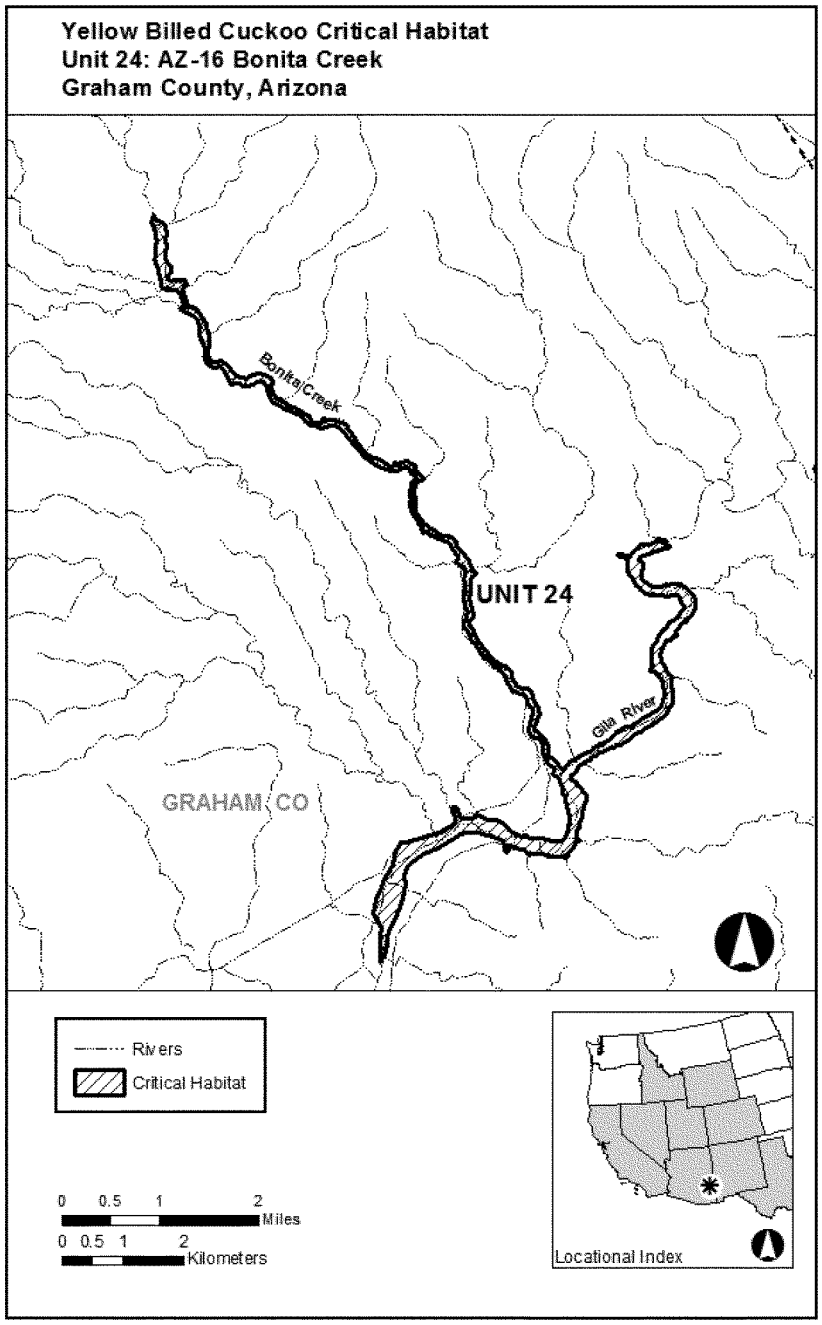
(30) Unit 22: AZ–14, Tonto Creek; Gila County, Arizona. Map of Units 22 and 37 follows:



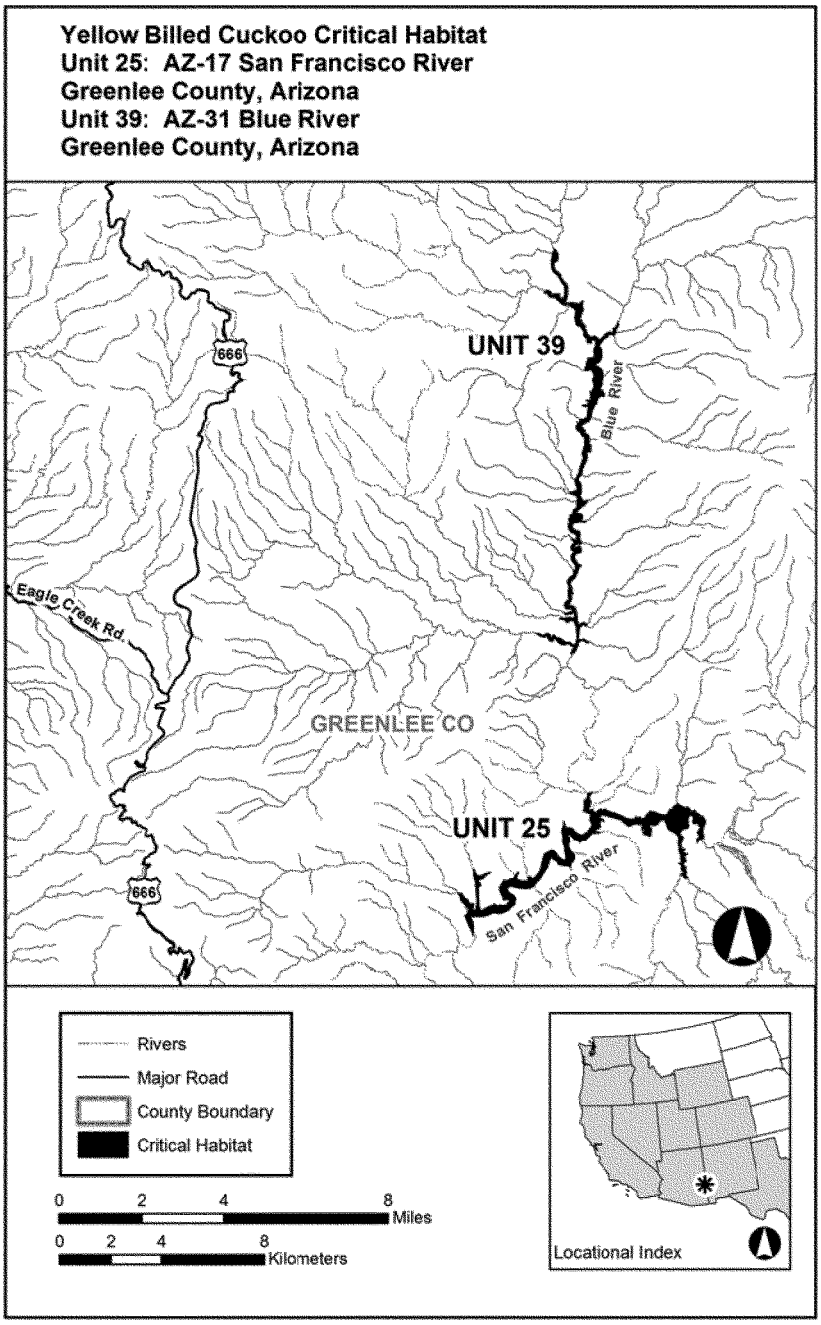
(31) Unit 23: AZ–15, Pinal Creek; Gila County, Arizona. Map of Unit 23 follows:



(32) Unit 24: AZ–16, Bonita Creek; Graham County, Arizona. Map of Unit 24 follows:

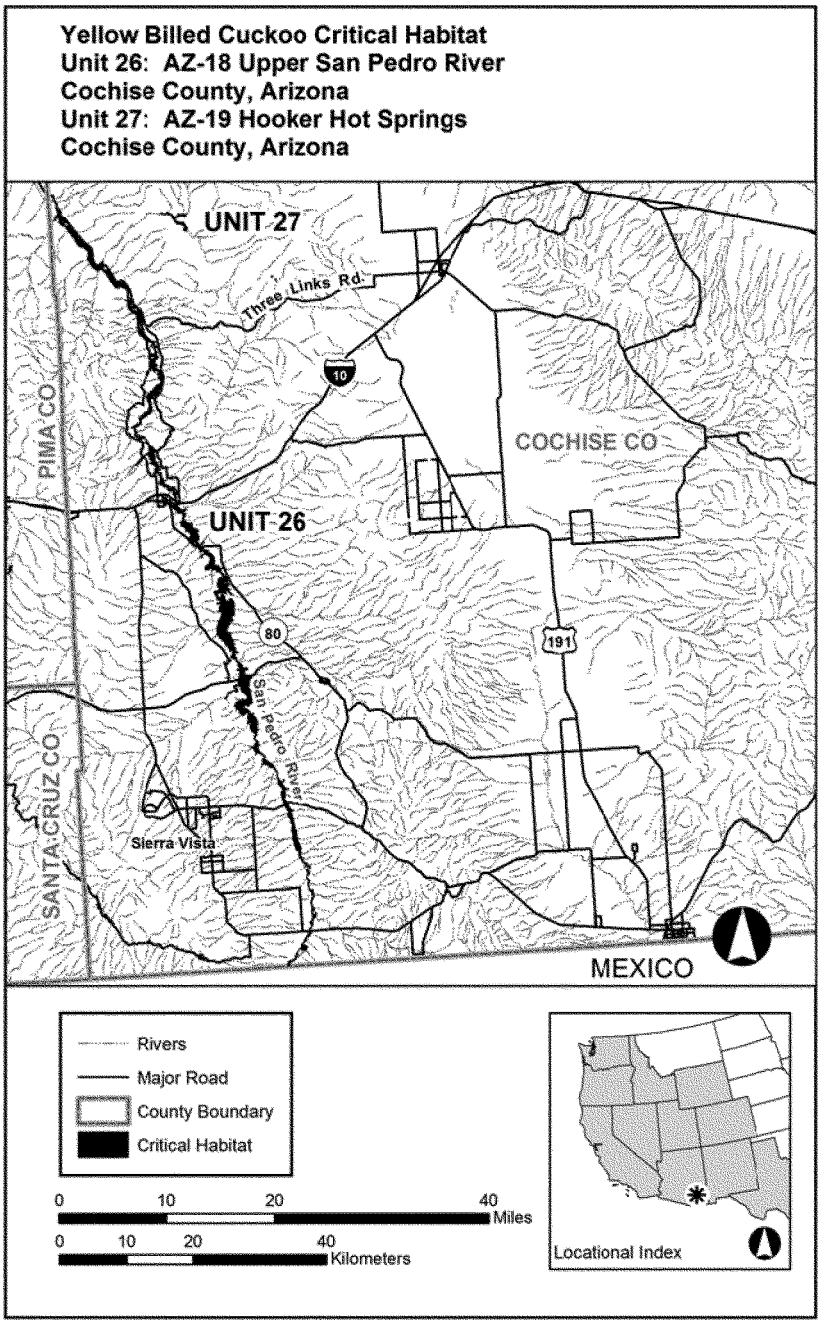


(33) Unit 25: AZ–17, San Francisco River; Greenlee County, Arizona. Map of Units 25 and 39 follows:

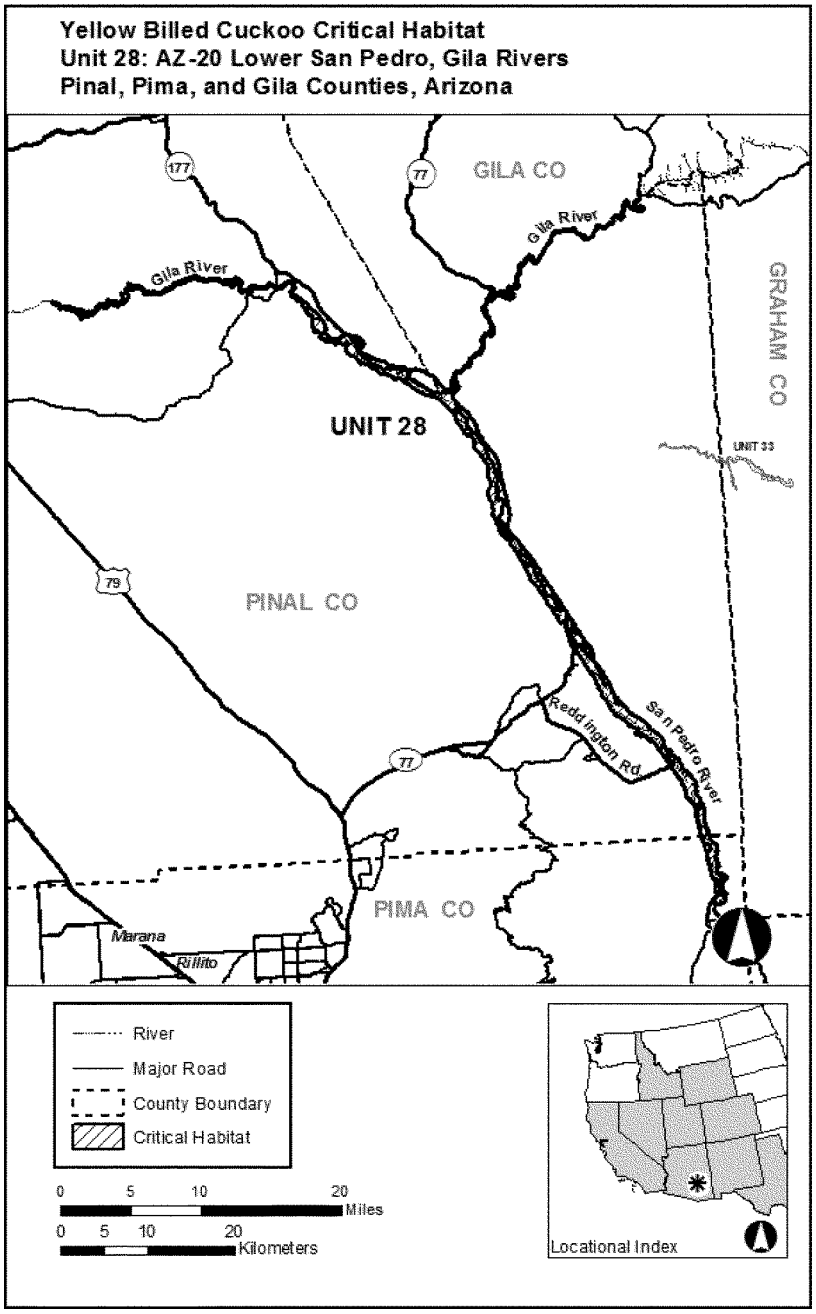


(34) Unit 26: AZ–18, Upper San Pedro River; Cochise County, Arizona. Map of Units 26 and 27 follows:

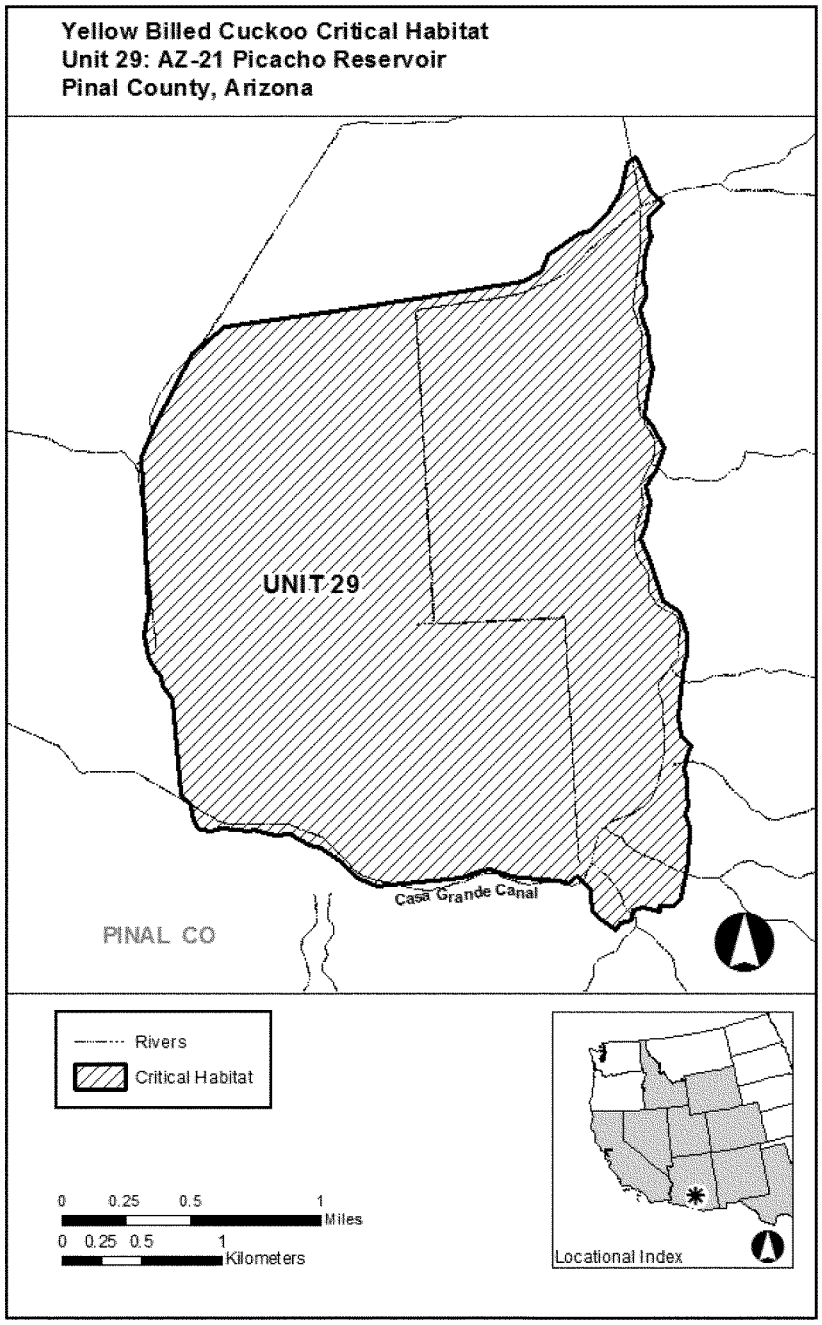
(35) Unit 27: AZ–19, Hooker Hot Springs; Cochise County, Arizona. Map of Unit 27 is provided at paragraph (34) of this entry.



(36) Unit 28: AZ–20, Lower San Pedro River and Gila River; Pima and Pinal Counties, Arizona. Map of Unit 28 follows:

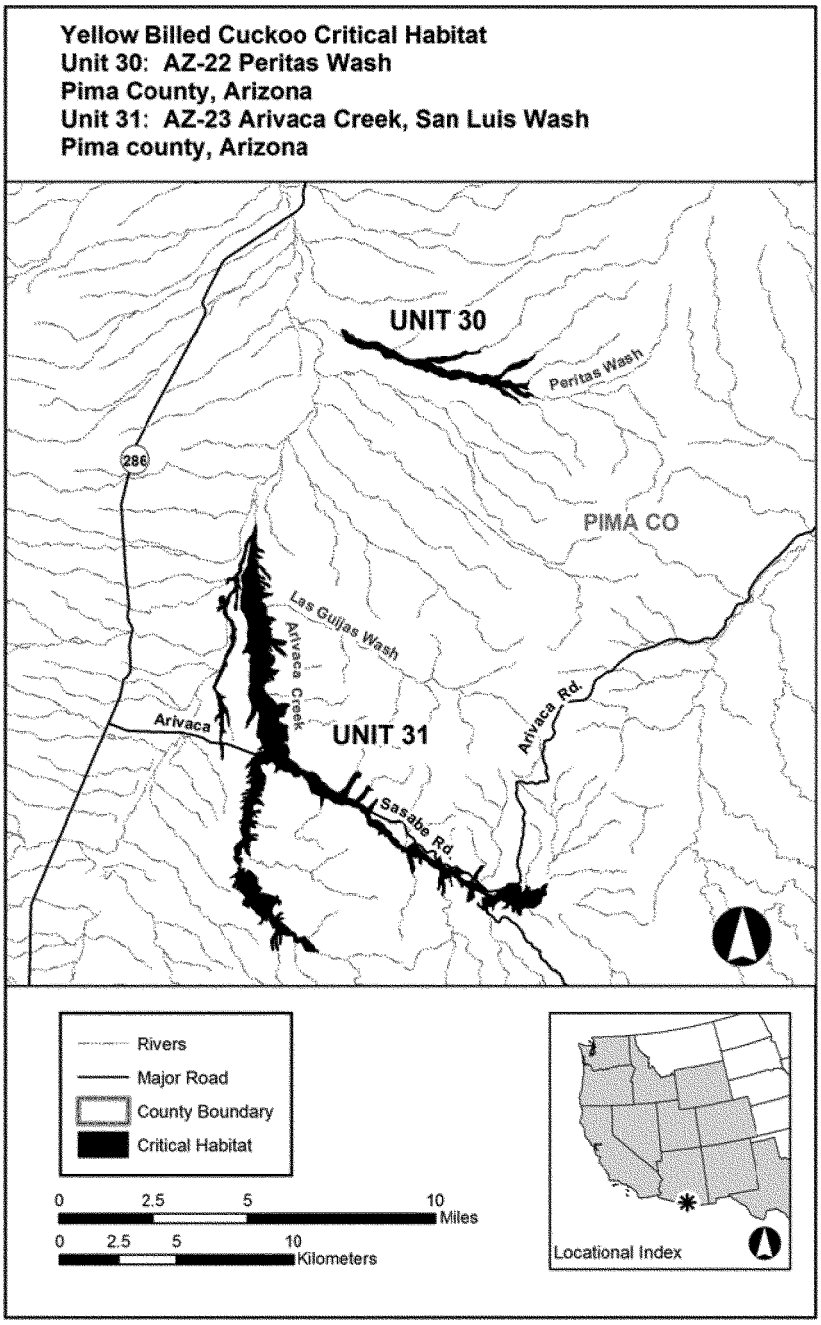


(37) Unit 29: AZ–21, Picacho Reservoir—Flood Control Basin; Pinal County, Arizona. Map of Unit 29 follows:

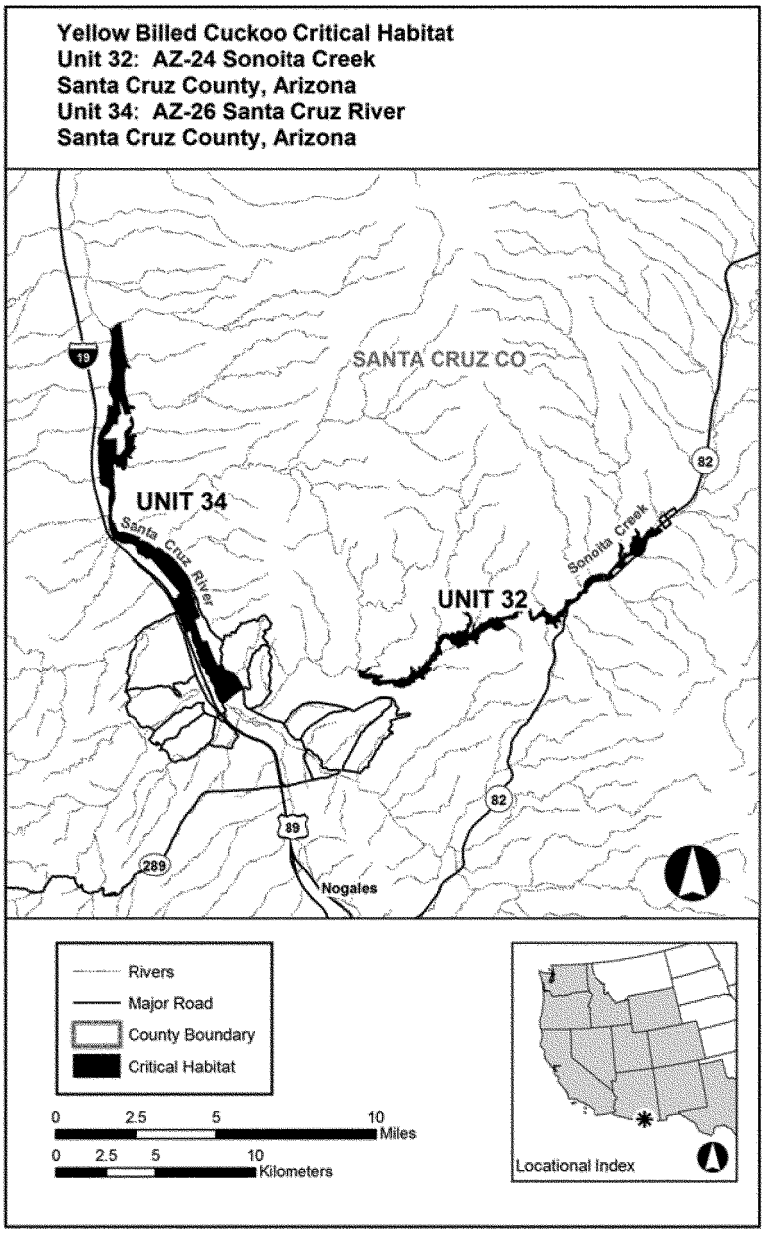


(38) Unit 30: AZ–22, Peritas Wash; Pima County, Arizona. Map of Units 30 and 31 follows:

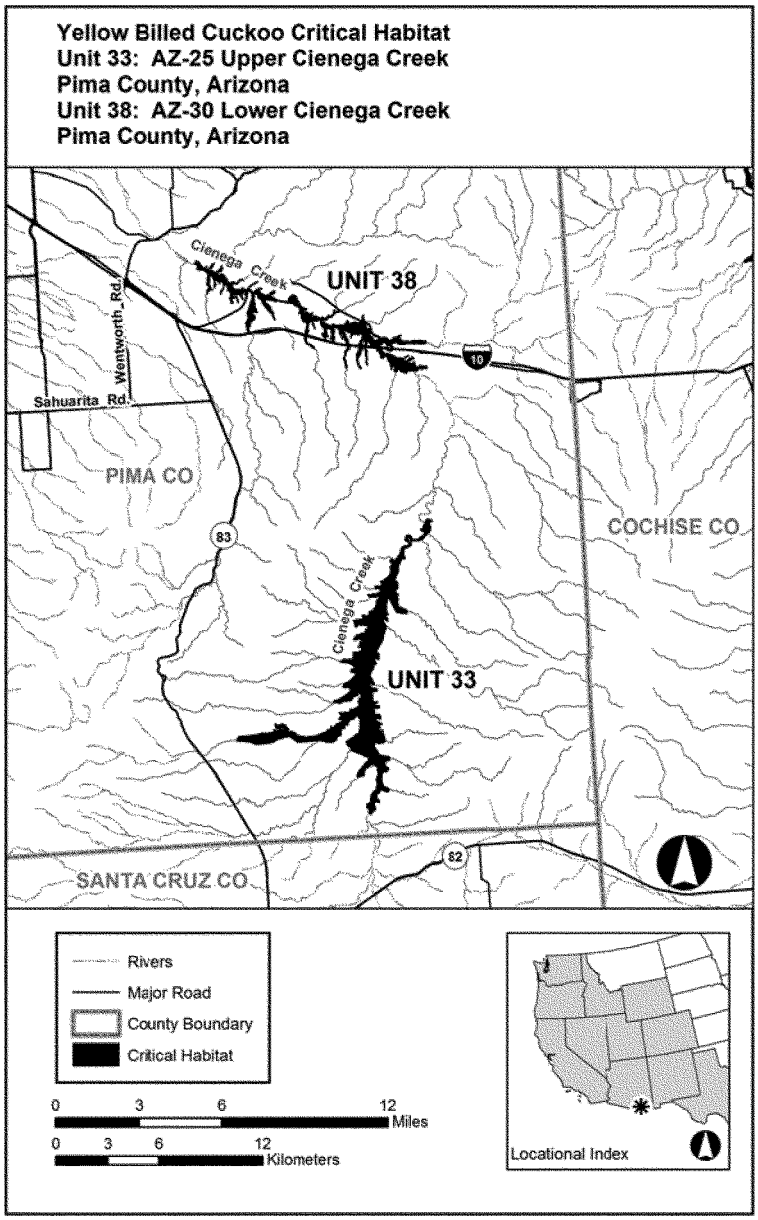
(39) Unit 31: AZ–23, Arivaca Wash and San Luis Wash; Pima County, Arizona. Map of Unit 31 is provided at paragraph (38) of this entry.



(40) Unit 32: AZ–24, Sonoita Creek; Santa Cruz County, Arizona. Map of Units 32 and 34 follows:

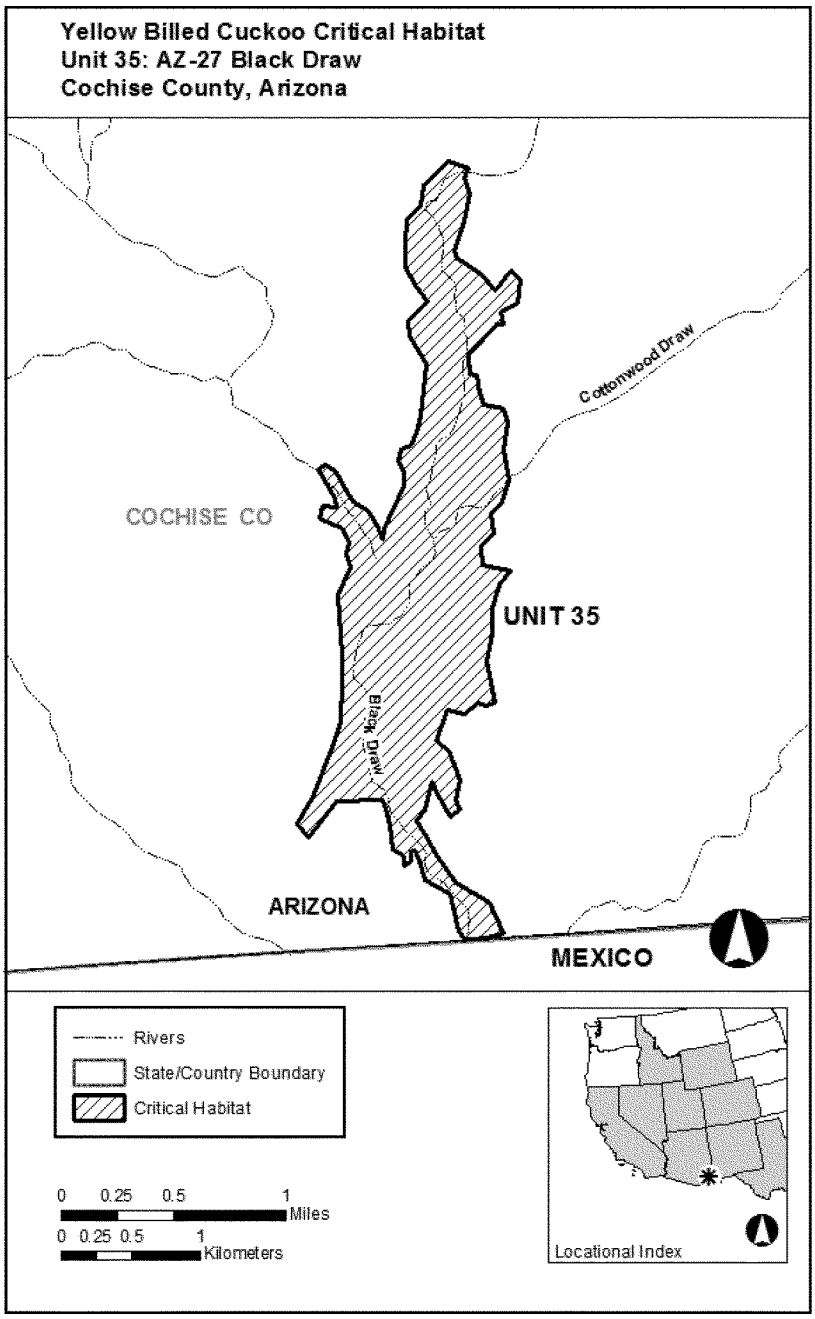


(41) Unit 33: AZ–25, Upper Cienega Creek; Pima County, Arizona. Map of Units 33 and 38 follows:

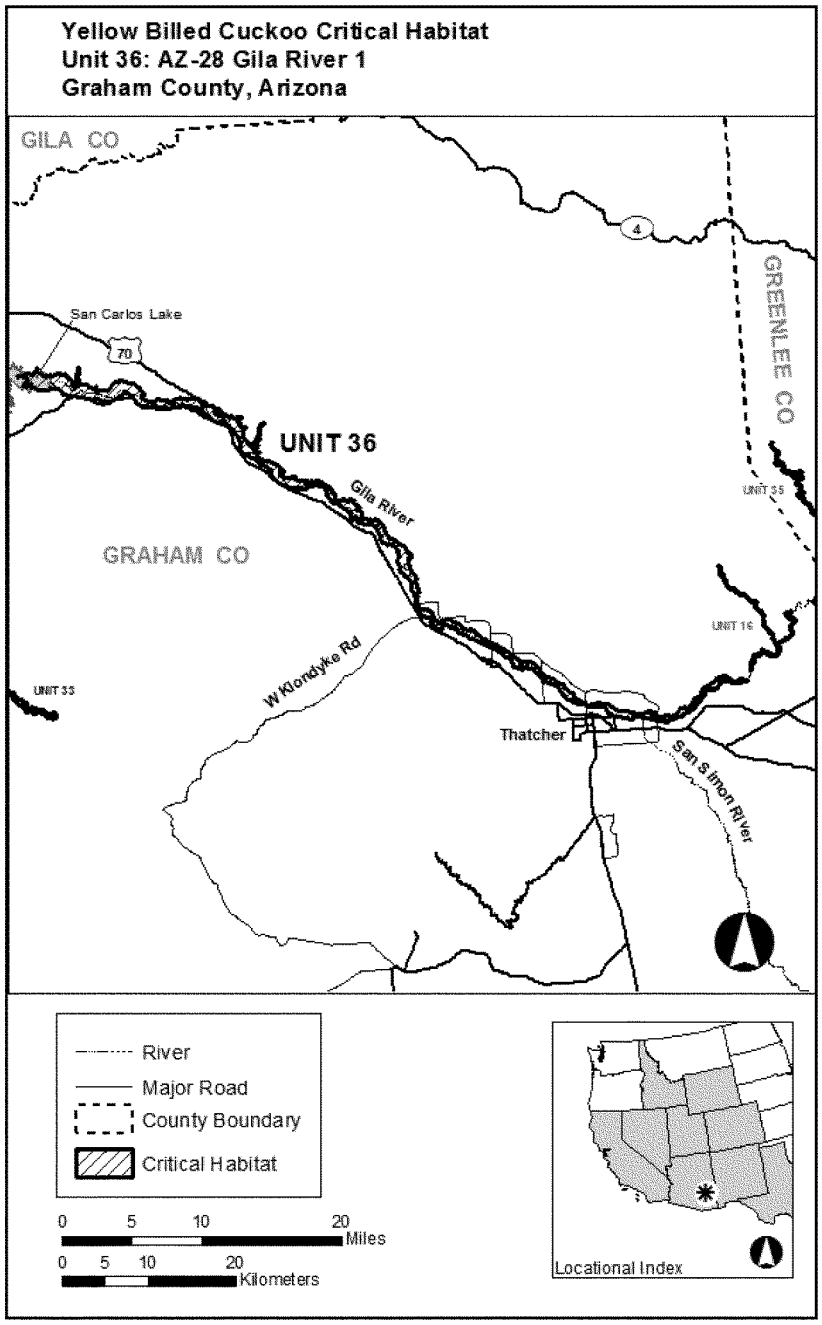


(42) Unit 34: AZ–26, Santa Cruz River; Santa Cruz County, Arizona. Map of Unit 34 is provided at paragraph (40) of this entry.

(43) Unit 35: AZ–27, Black Draw; Cochise County, Arizona. Map of Unit 35 follows:



(44) Unit 36: AZ–28, Gila River 1; Graham County, Arizona. Map of Unit 36 follows:

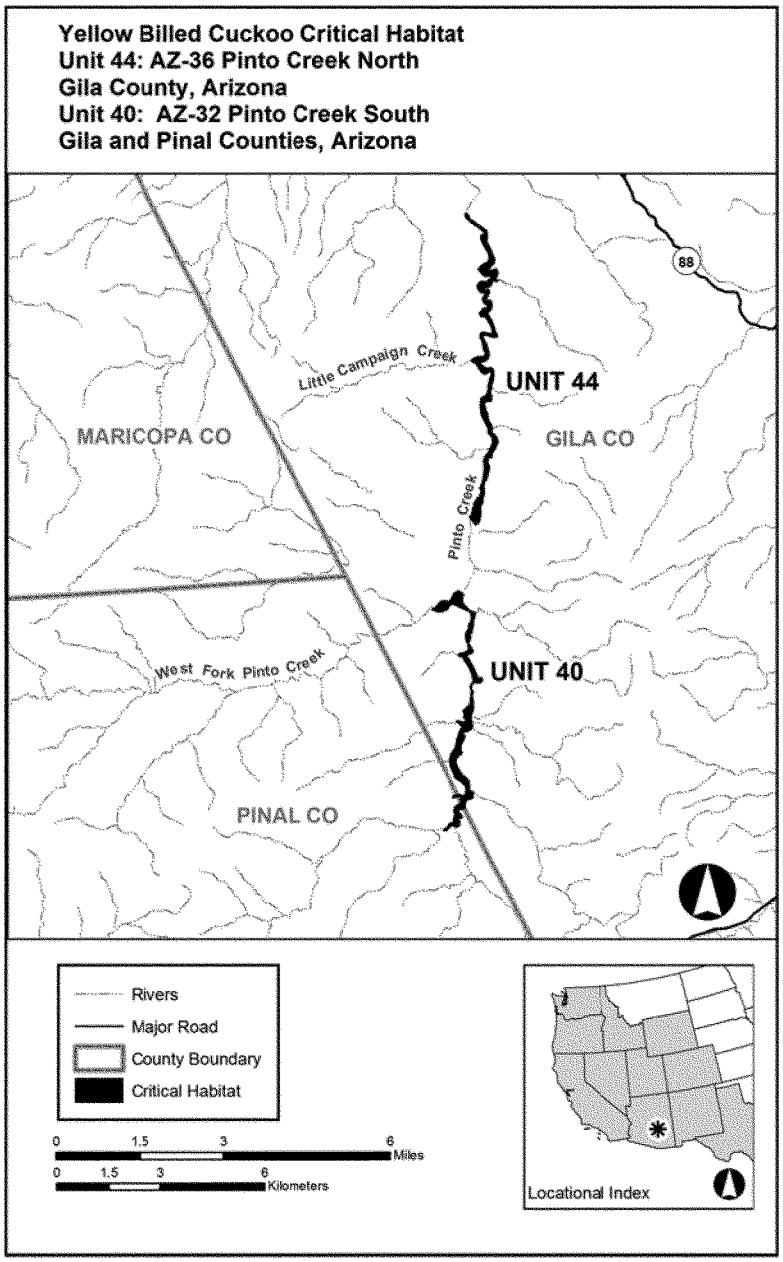


(45) Unit 37: AZ–29, Salt River; Gila County, Arizona. Map of Unit 37 is provided at paragraph (30) of this entry.

(46) Unit 38: AZ–30, Lower Cienega Creek; Pima County, Arizona. Map of Unit 38 is provided at paragraph (41) of this entry.

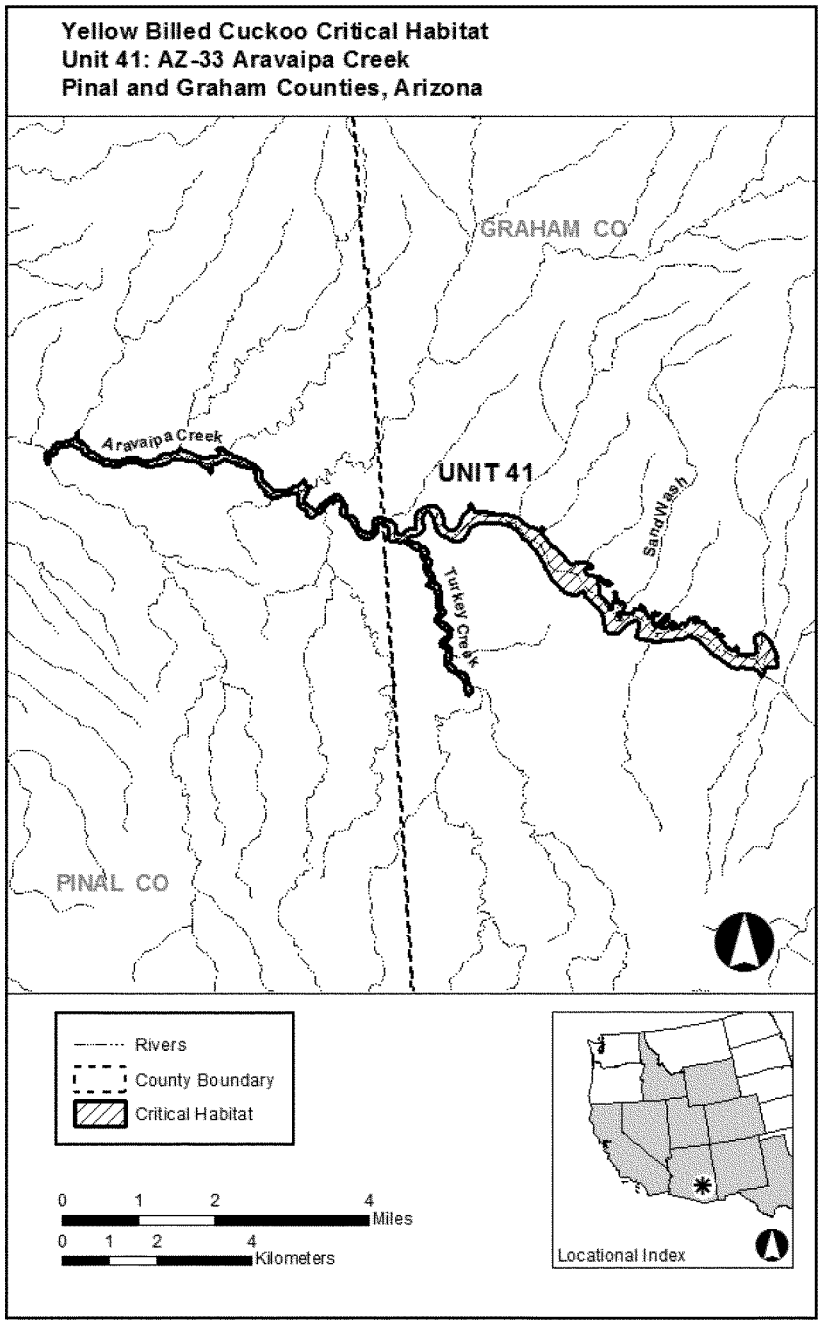
(47) Unit 39: AZ–31, Blue River; Greenlee County, Arizona. Map of Unit 39 is provided at paragraph (33) of this entry.

(48) Unit 40: AZ–32, Pinto Creek South; Gila County, Arizona. Map of Units 40 and 44 follows:



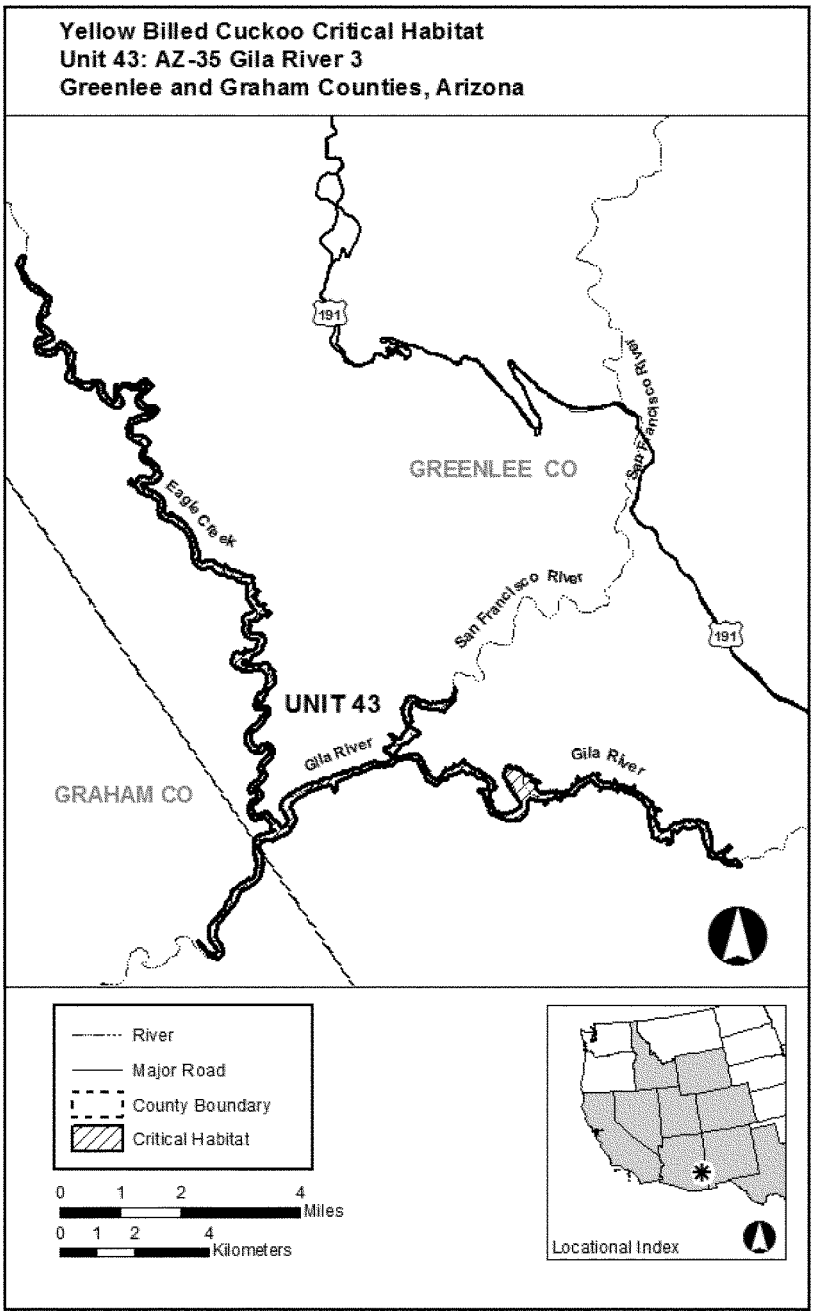
(49) Unit 41: AZ–33, Aravaipa Creek; Pima and Graham Counties, Arizona.

Map of Unit 41 follows:



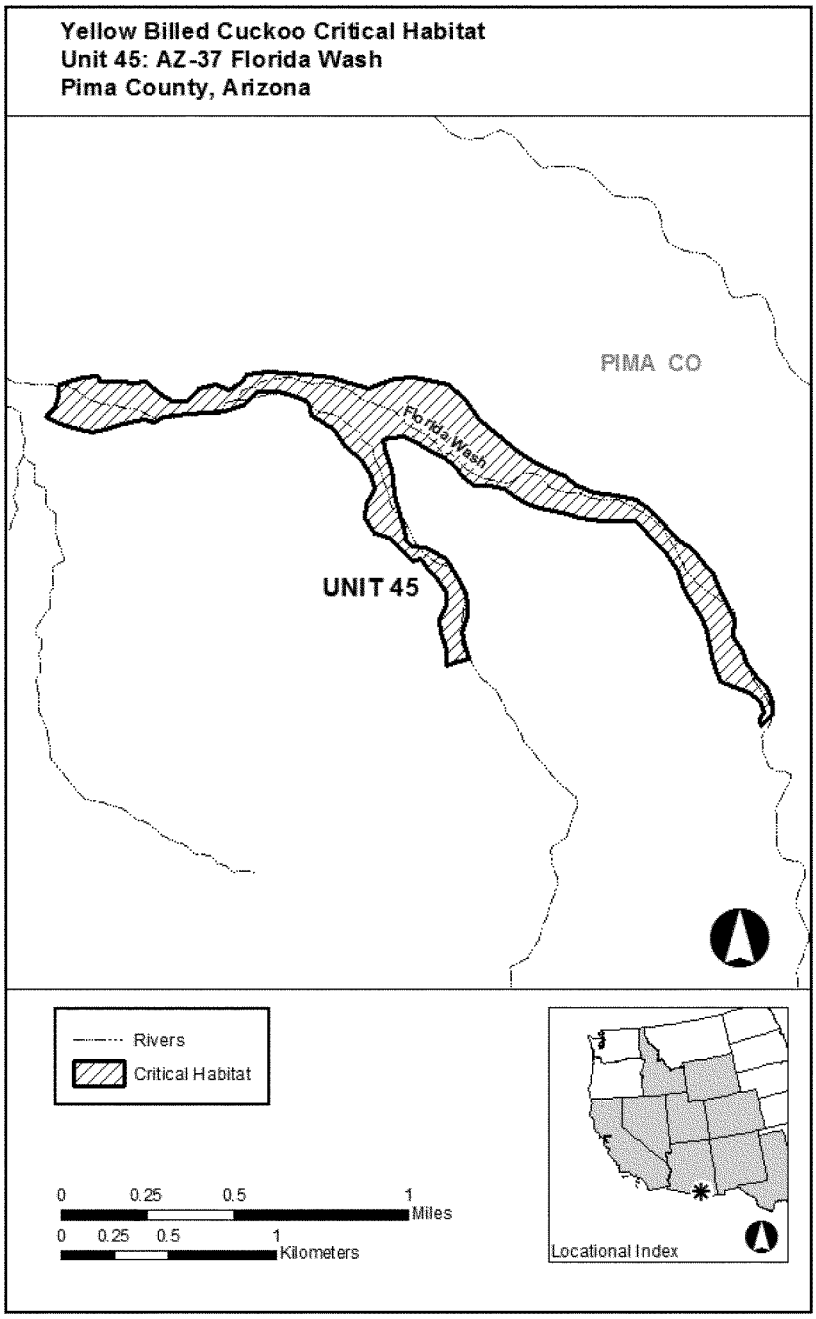
(50) Unit 42: AZ–34, Lower Verde River; Maricopa County, Arizona. Map of Unit 42 is provided at paragraph (29) of this entry.

(51) Unit 43: AZ–35, Gila River 3; Graham and Greenlee Counties, Arizona. Map of Unit 43 follows:

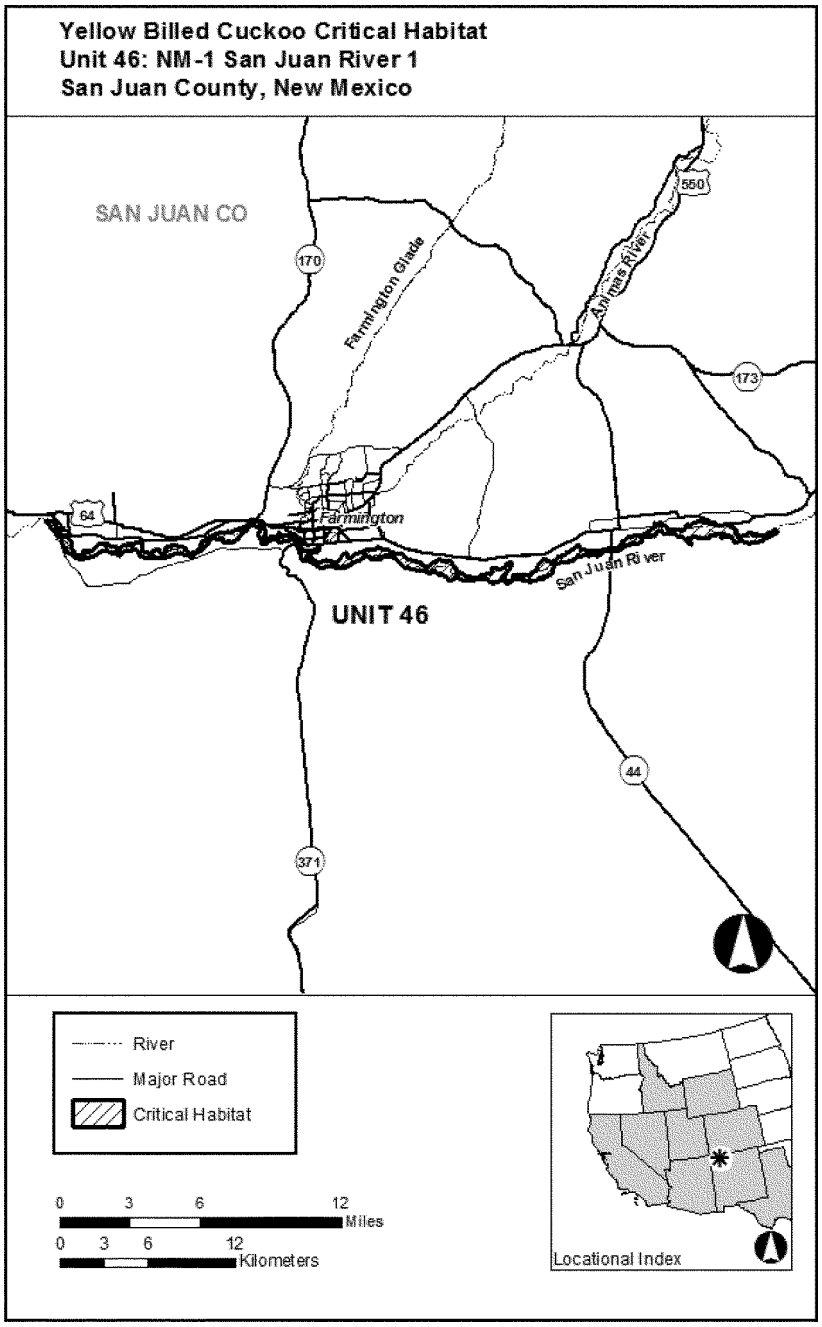


(52) Unit 44: AZ–36, Pinto Creek North; Gila County, Arizona. Map of Unit 44 is provided at paragraph (48) of this entry.

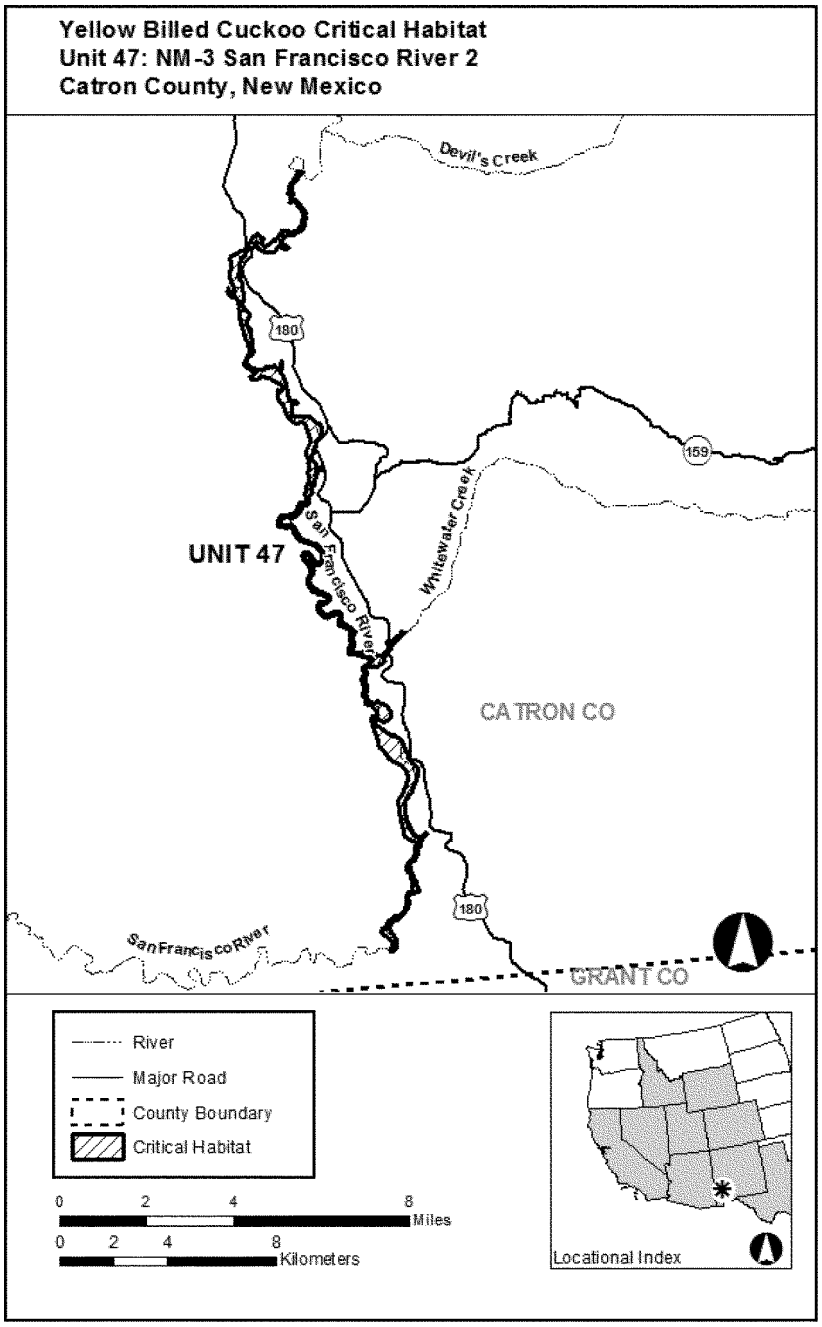
(53) Unit 45: AZ–37, Florida Wash; Pima County, Arizona. Map of Unit 45 follows:



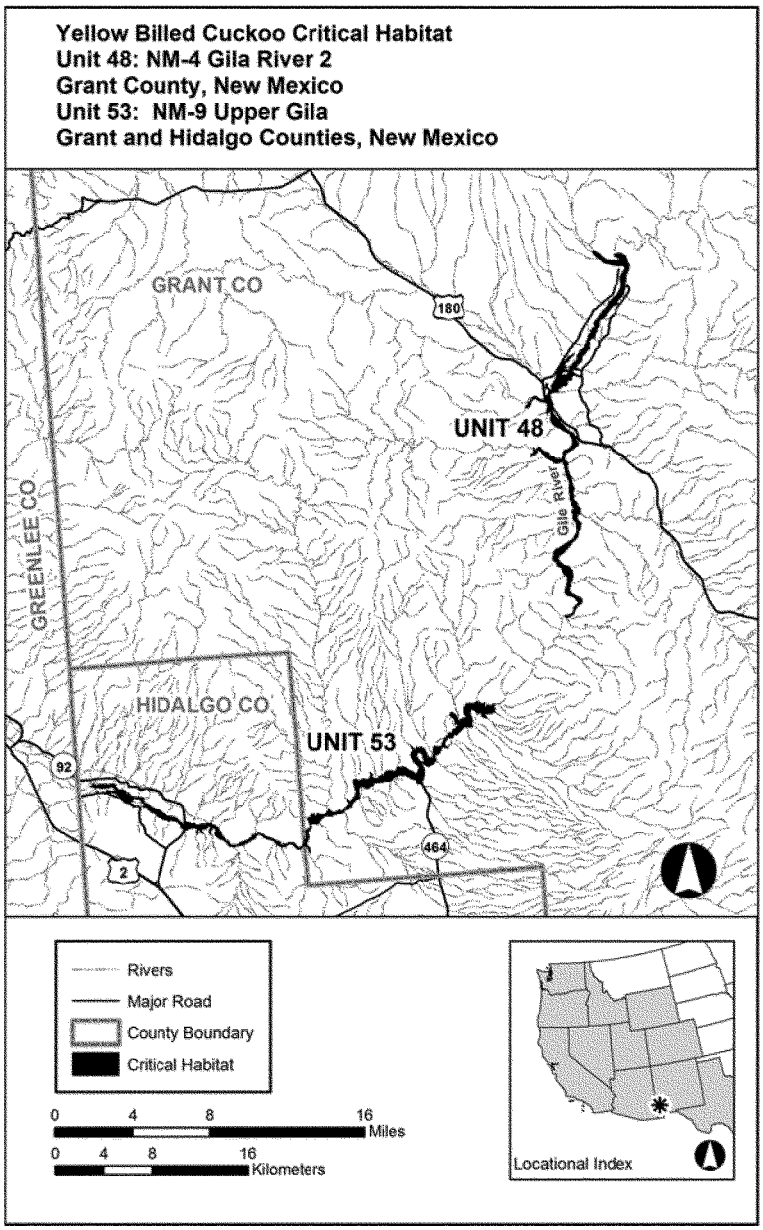
(54) Unit 46: NM–1, San Juan River 1; San Juan County, New Mexico. Map of Unit 45 follows:



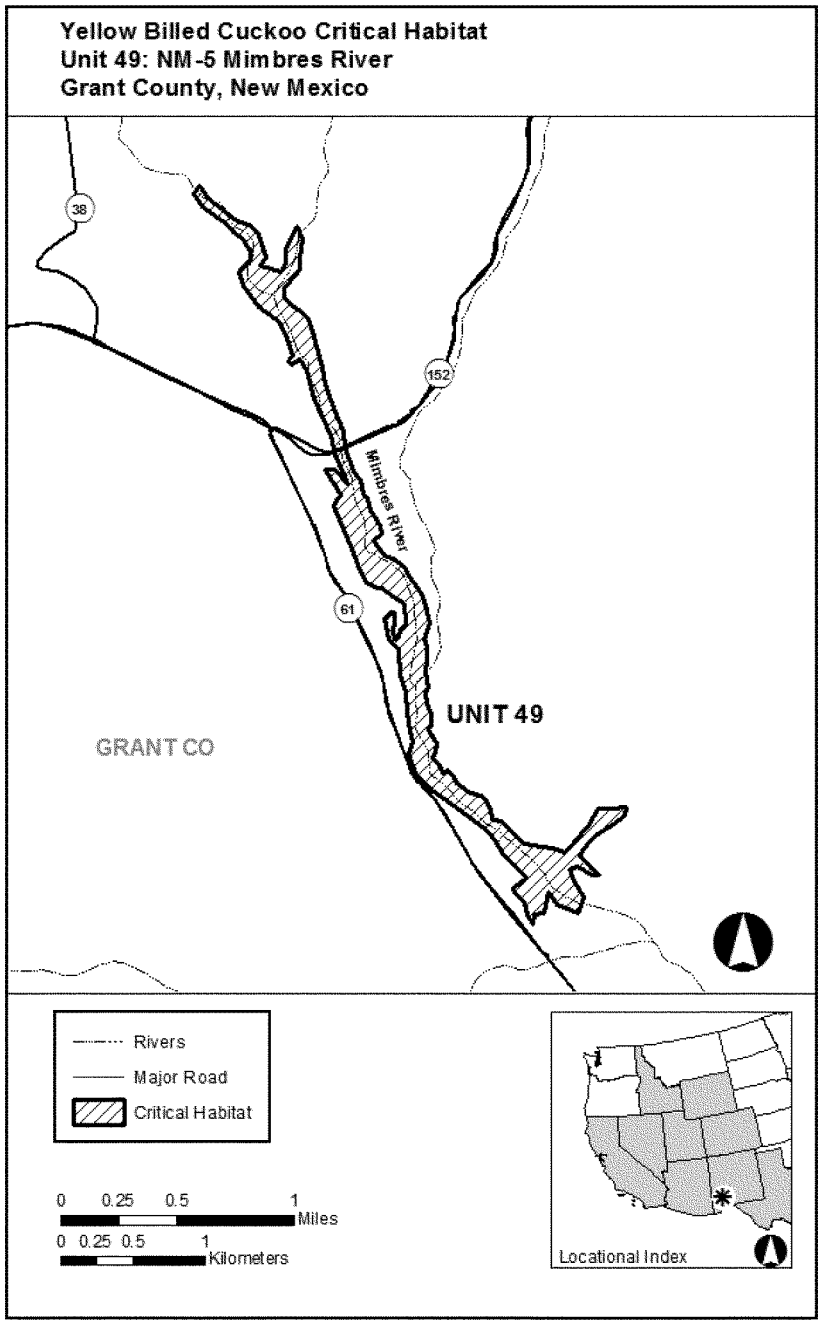
(55) Unit 47: NM–3, San Francisco River 2; Catron County, New Mexico. Map of Unit 47 follows:



(56) Unit 48: NM–4, Gila River 2; Grant and Hidalgo Counties, New Mexico. Map of Units 48 and 53 follows:

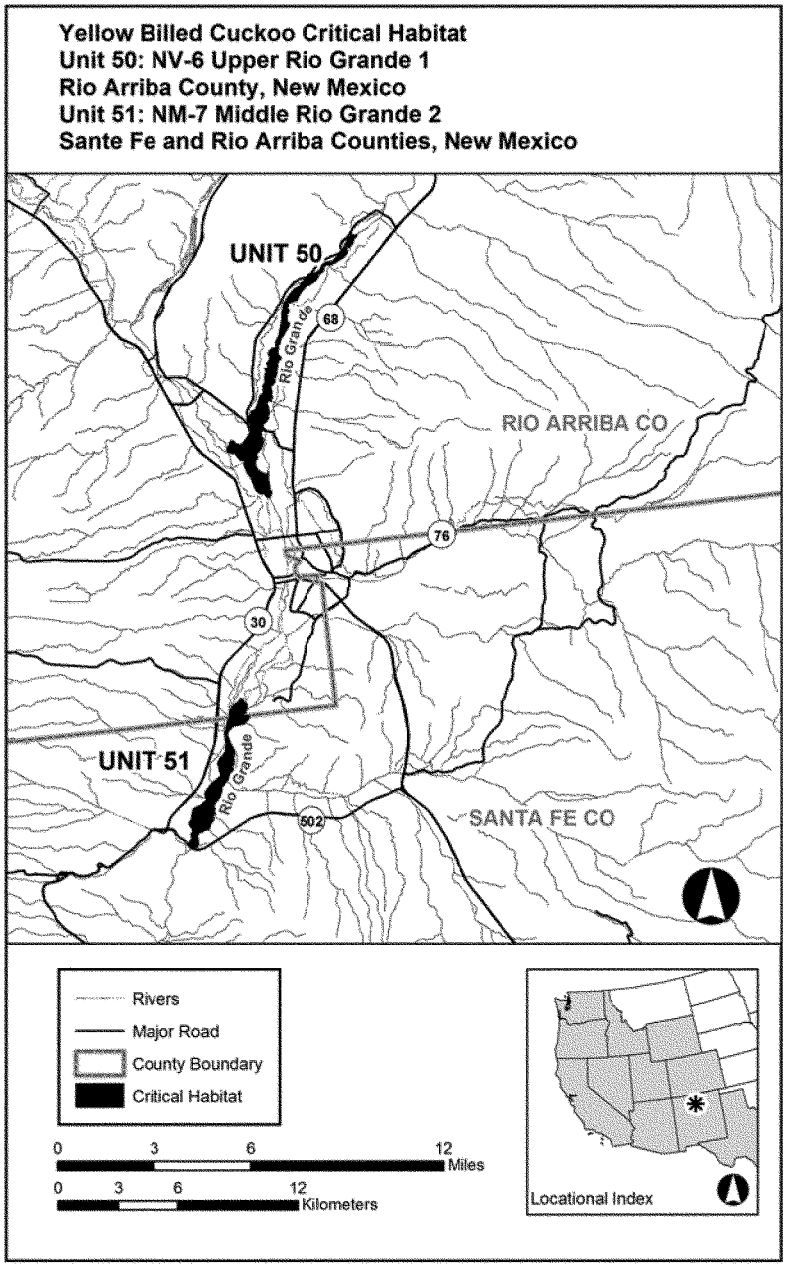


(57) Unit 49: NM–5, Mimbres River; Grant County, New Mexico. Map of Unit 49 follows:

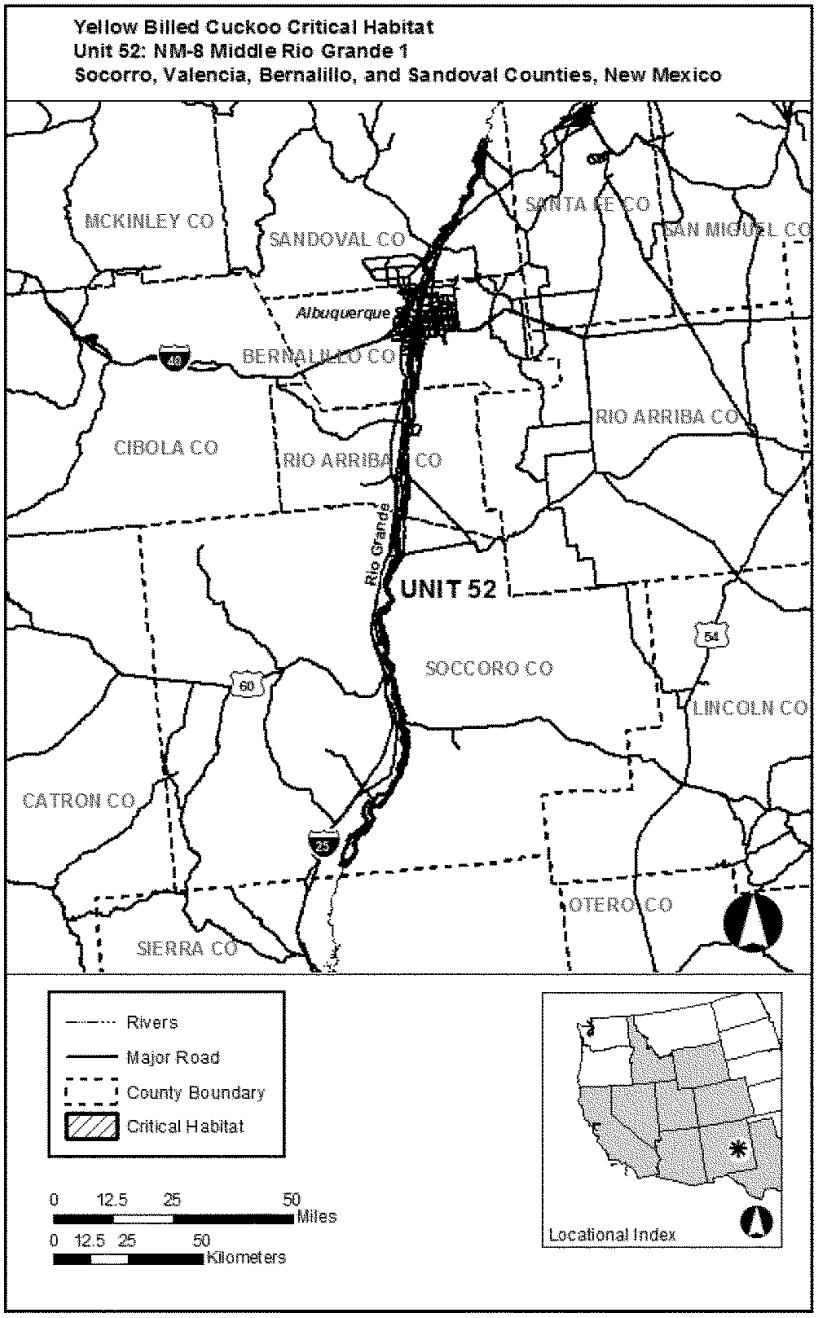


(58) Unit 50: NM–6, Upper Rio Grande 1; Rio Arriba County, New Mexico. Map of Units 50 and 51 follows:

(59) Unit 51: NM–7, Upper Rio Grande 2; Santa Fe and Rio Arriba Counties, New Mexico. Map of Unit 51 is provided at paragraph (58) of this entry.

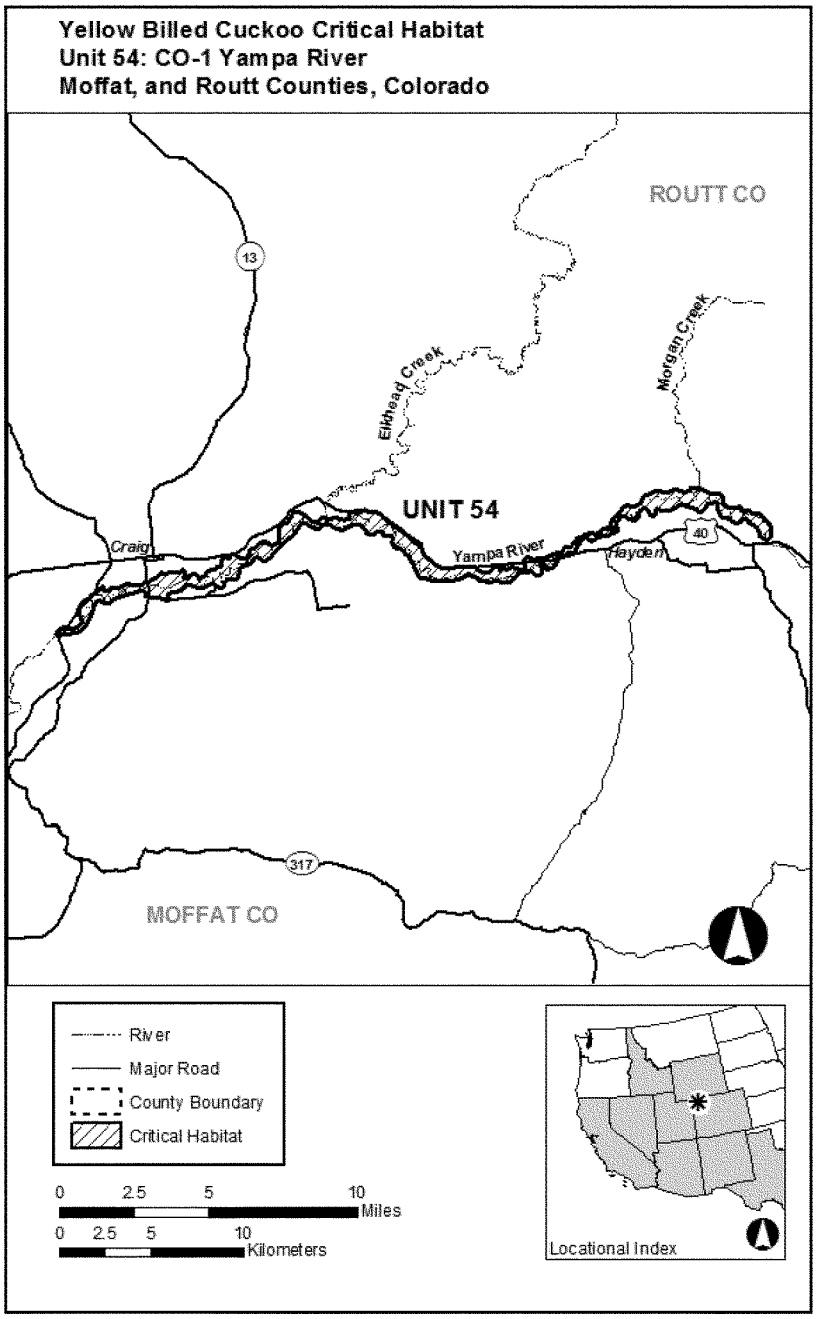


(60) Unit 52: NM–8, Middle Rio Grande 1; Sierra, Socorro, Valencia, Bernalillo, and Sandoval Counties, New Mexico. Map of Unit 52 follows:

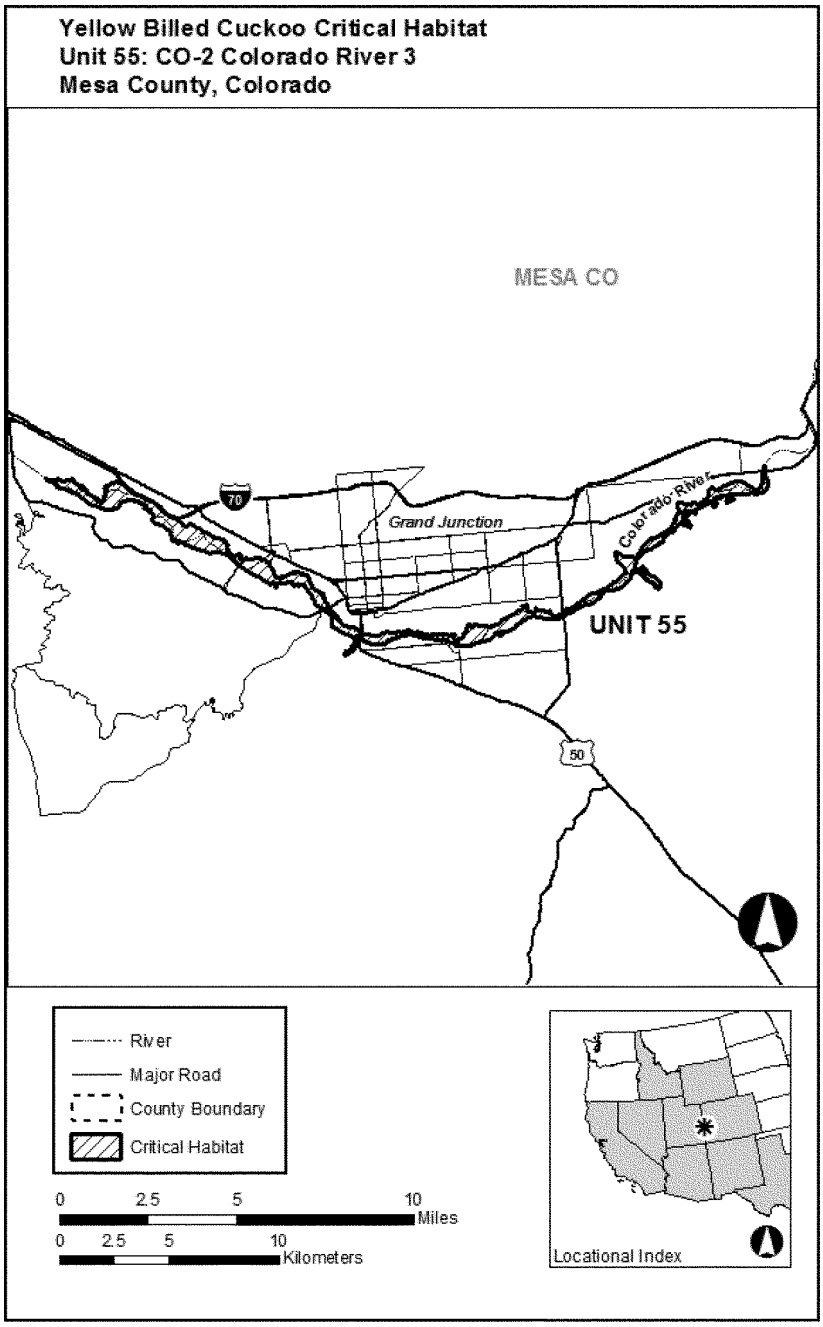


(61) Unit 53: NM–9, Upper Gila River; Grant County, New Mexico. Map of Unit 53 is provided at paragraph (56) of this entry.

(62) Unit 54: CO–1, Yampa River; Moffat and Routt Counties, Colorado. Map of Unit 54 follows:

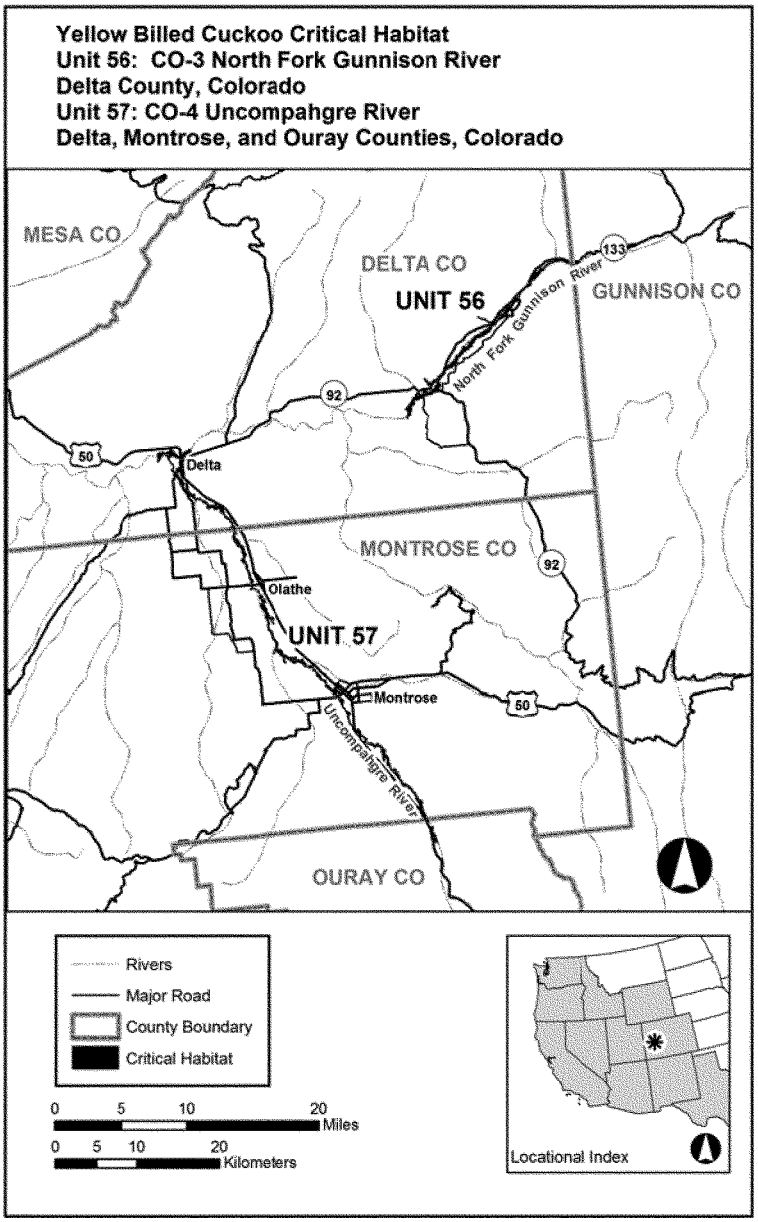


(63) Unit 55: CO–2, Colorado River 3; Mesa County, Colorado. Map of Unit 55 follows:

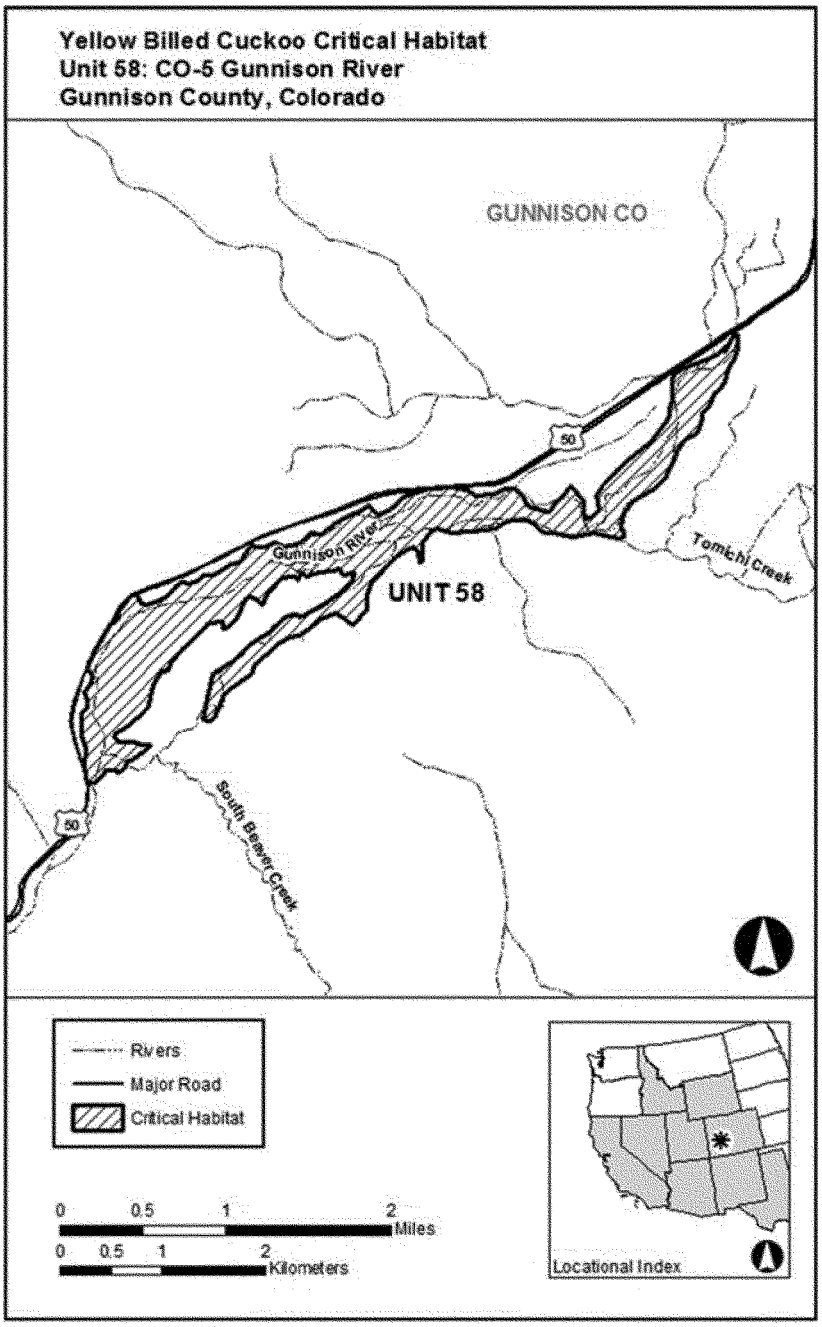


(64) Unit 56: CO–3, North Fork Gunnison River; Delta County, Colorado. Map of Units 56 and 57 follows:

(65) Unit 57: CO–4, Uncompahgre River; Delta, Montrose, and Ouray Counties, Colorado. Map of Unit 57 is provided at paragraph (64) of this entry.

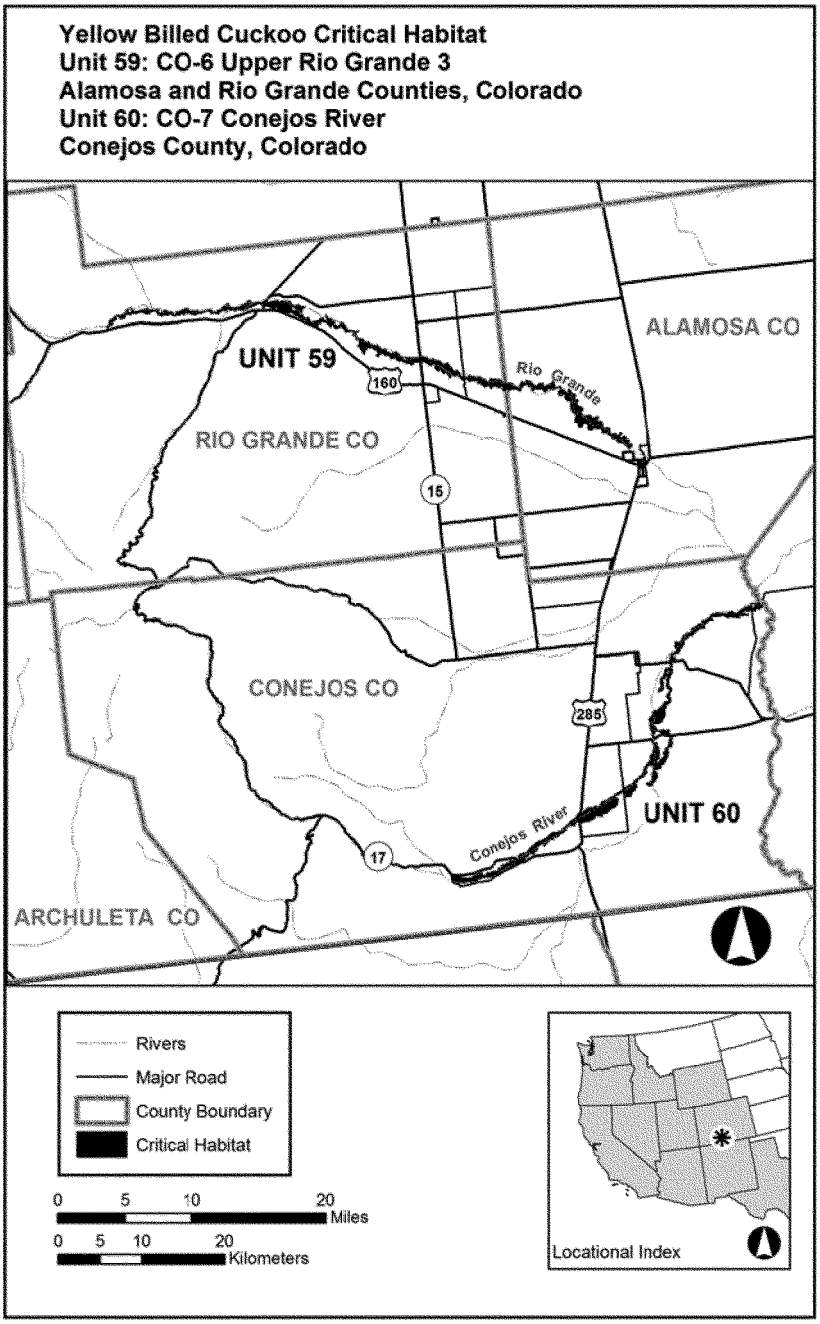


(66) Unit 58: CO–5, Gunnison River; Gunnison County, Colorado. Map of Unit 58 follows:

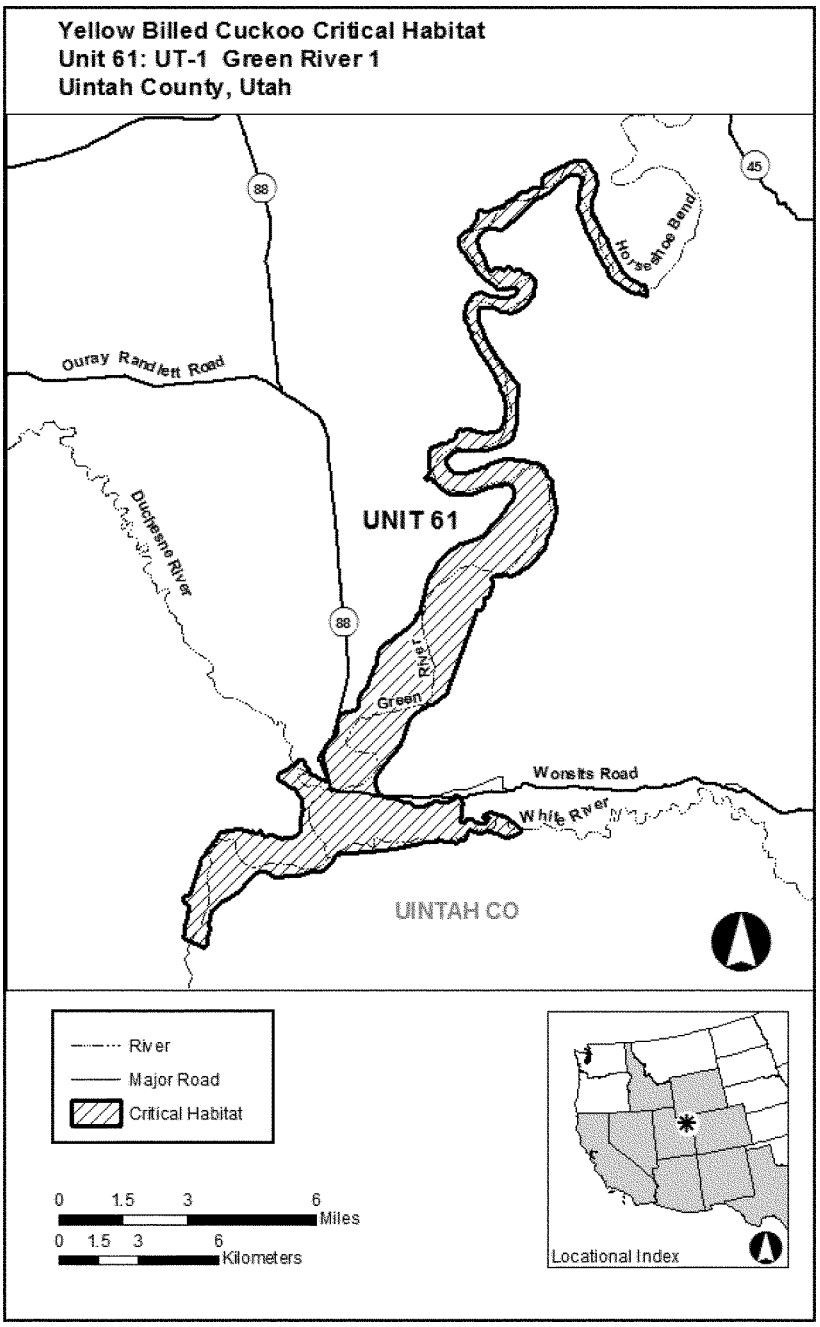


(67) Unit 59: CO–6, Upper Rio Grande 3; Alamosa and Rio Grande Counties, Colorado. Map of Units 59 and 60 follows:

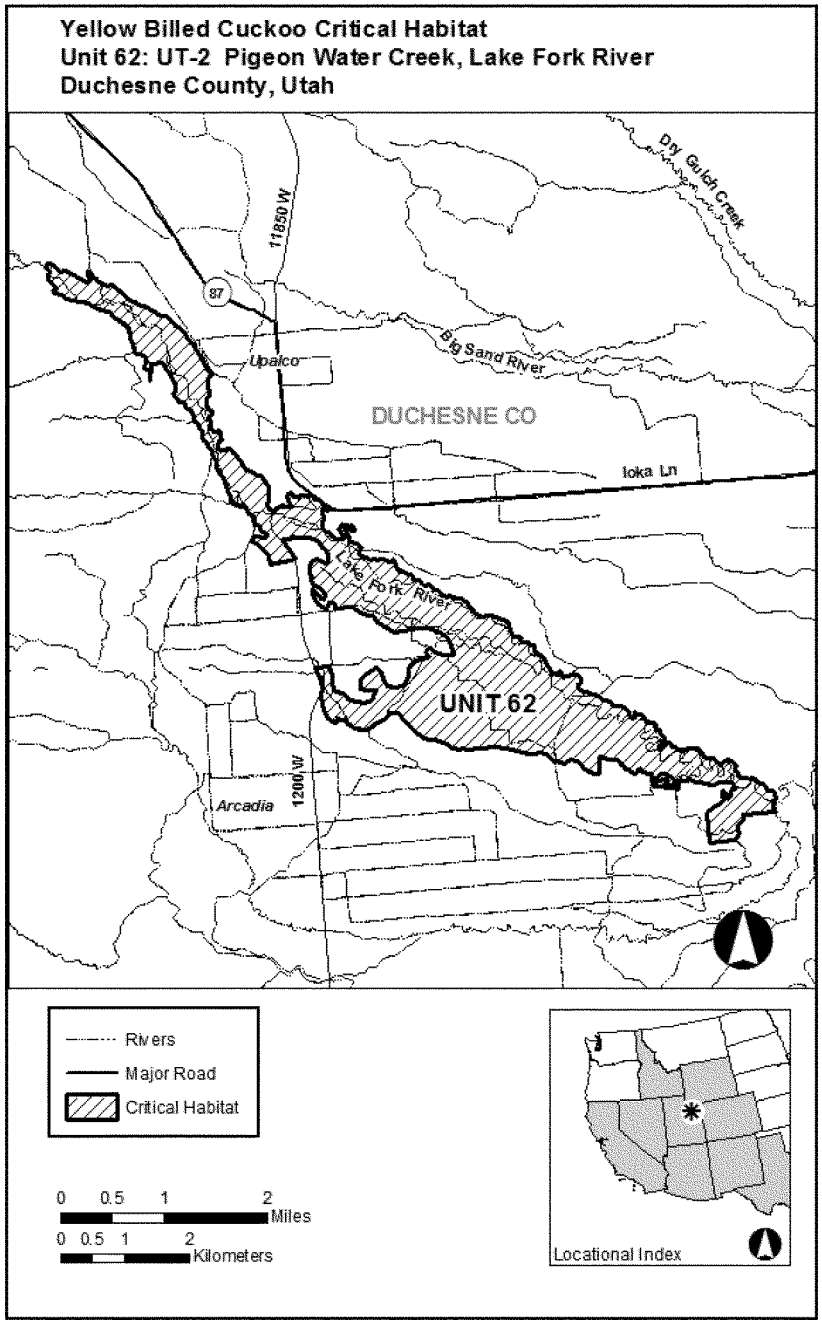
(68) Unit 60: CO–7, Conejos River; Conejos County, Colorado. Map of Unit 60 is provided at paragraph (67) of this entry.



(69) Unit 61: UT–1, Green River 1; Uintah County, Utah. Map of Unit 61 follows:

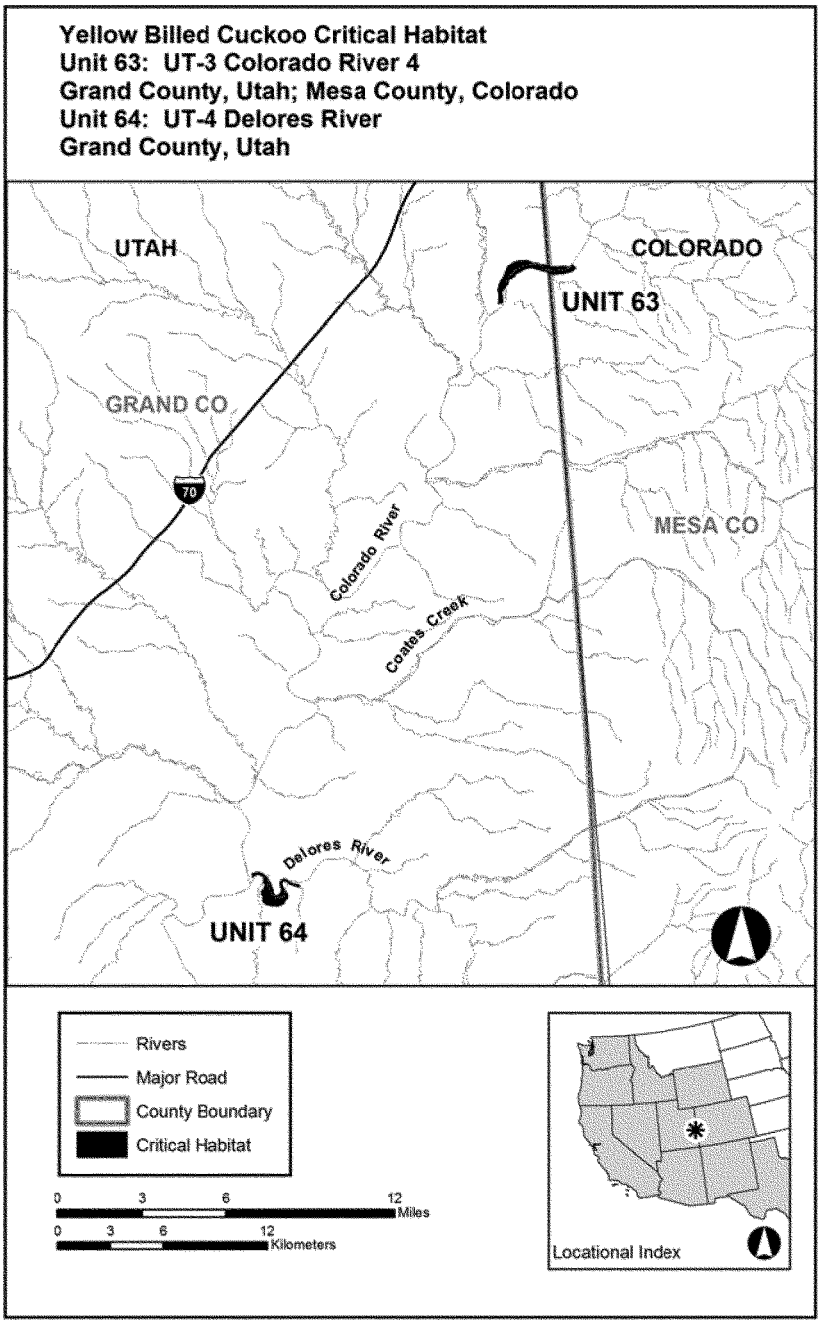


(70) Unit 62: UT–2, Pigeon Water Creek and Lake Fork River; Duchesne County, Utah. Map of Unit 62 follows:



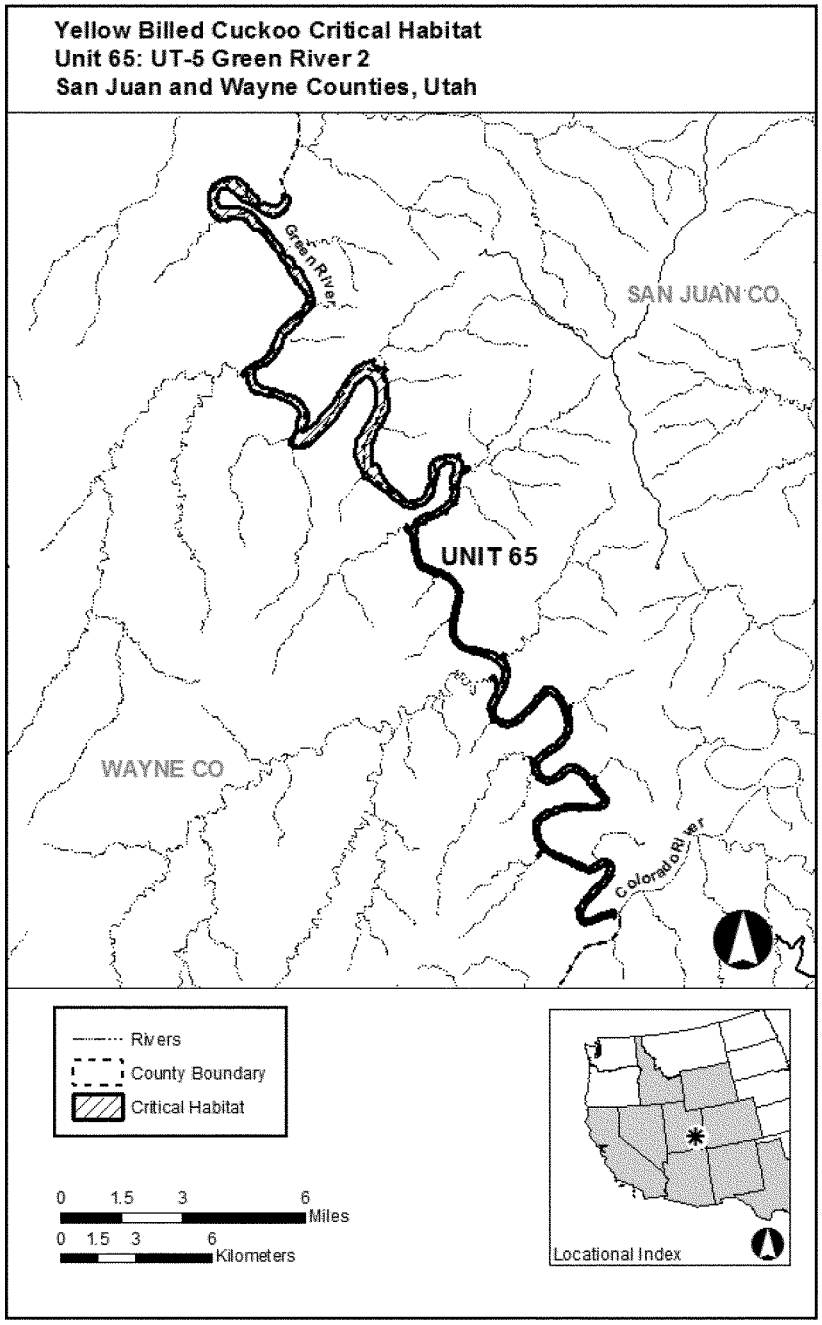
(71) Unit 63: UT–3, Colorado River 4; Mesa County, Colorado, and Grand County, Utah. Map of Units 63 and 64 follows:

(72) Unit 64: UT–4, Dolores River; Grand County, Utah. Map of Unit 64 is provided at paragraph (71) of this entry.

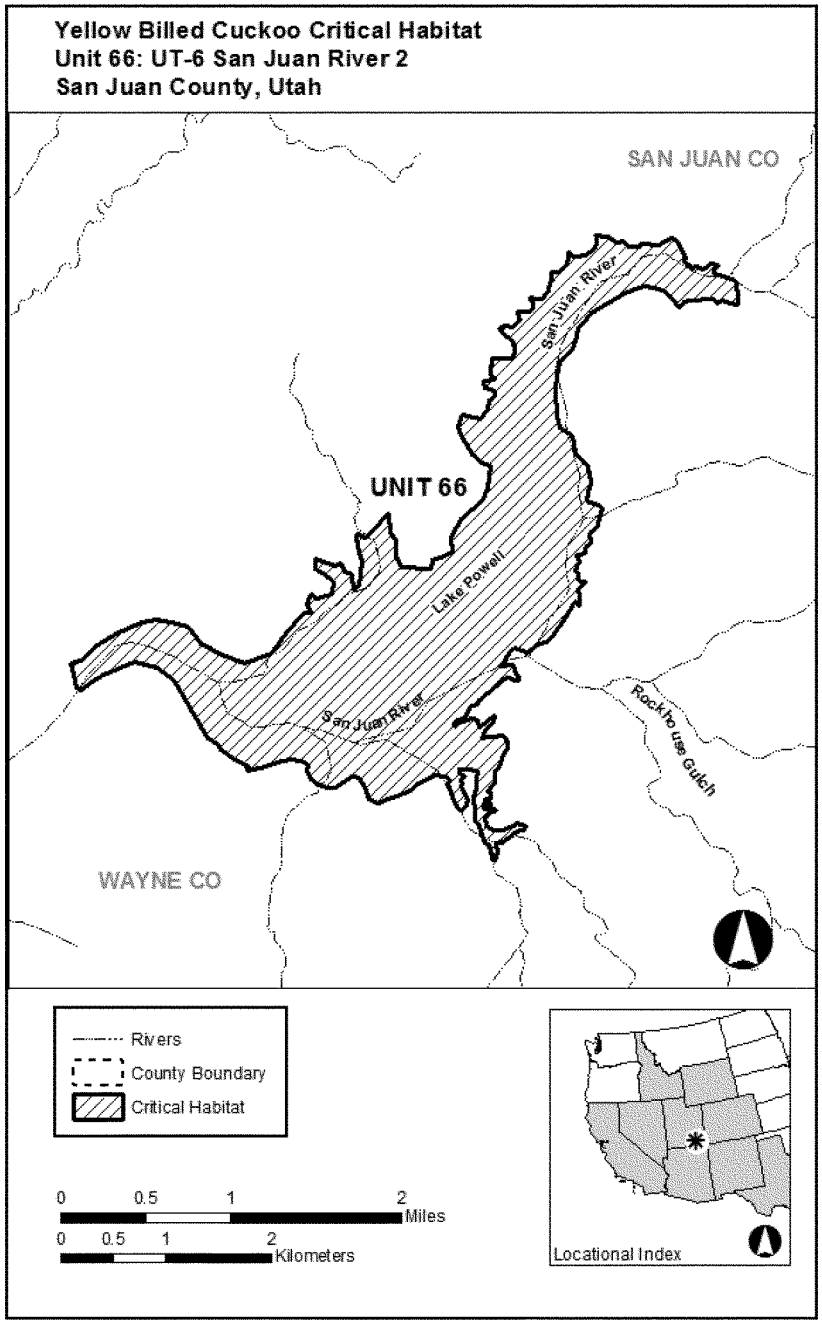


(73) Unit 65: UT–5, Green River 2; San Juan and Wayne Counties, Utah.

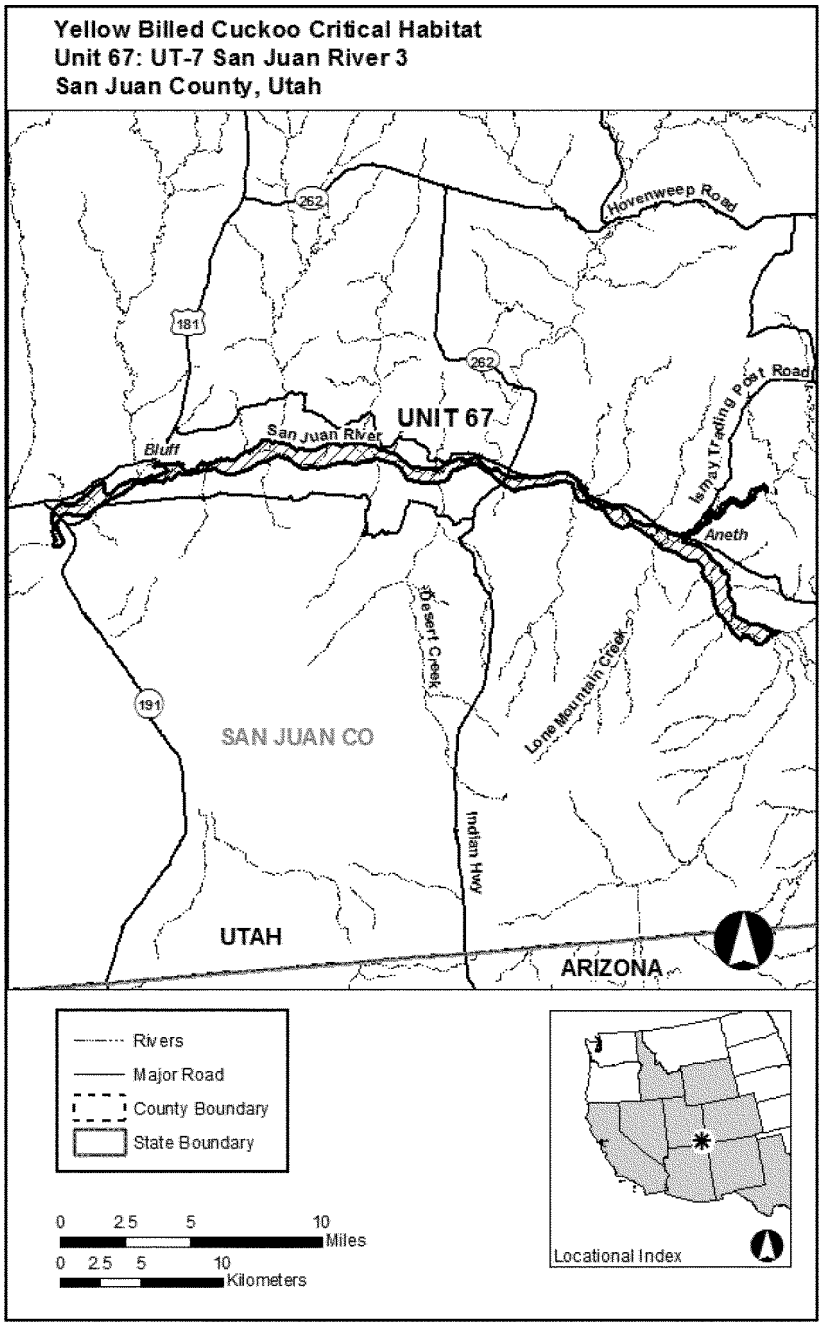
Map of Unit 65 follows:



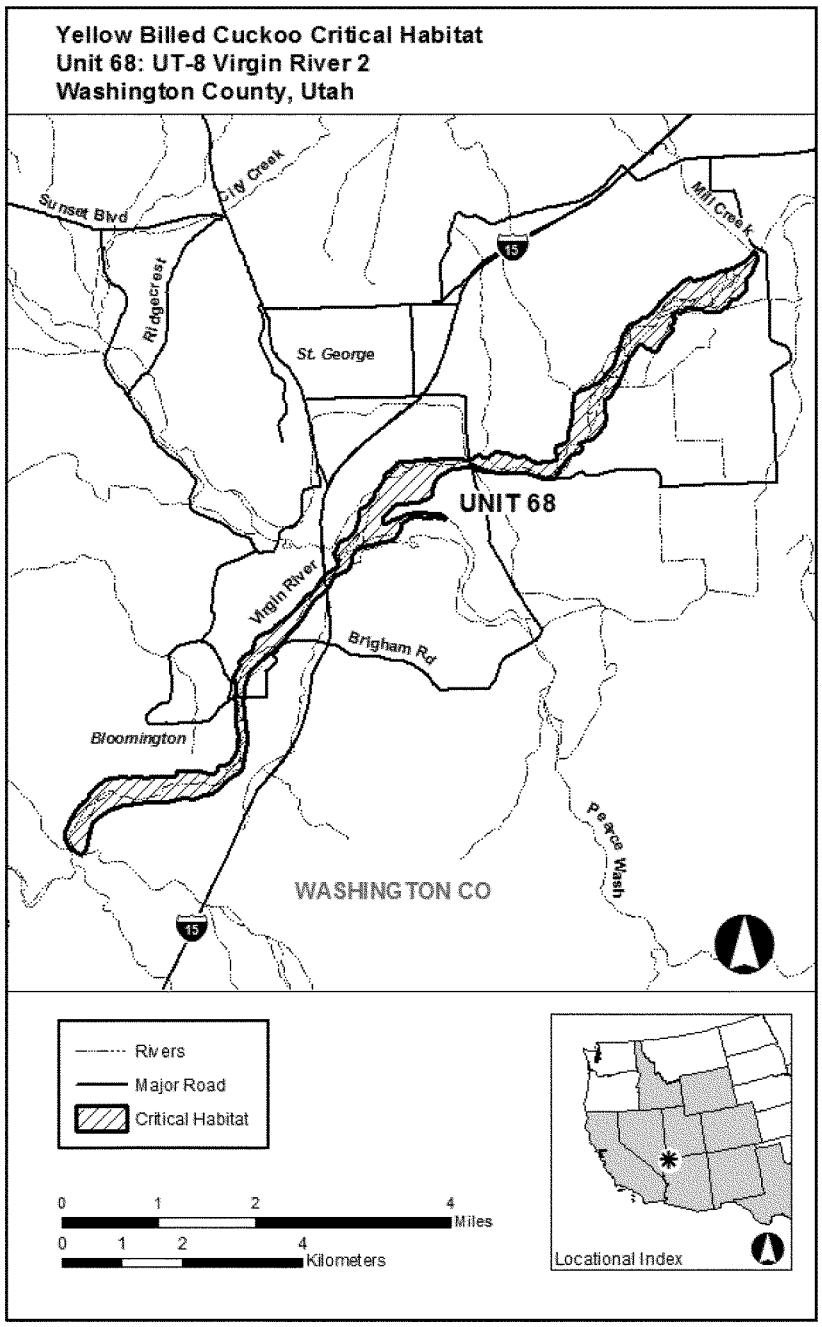
(74) Unit 66: UT–6, San Juan River 2; San Juan County, Utah. Map of Unit 66 follows:



(75) Unit 67: UT–7, San Juan River 3; San Juan County, Utah. Map of Unit 67 follows:

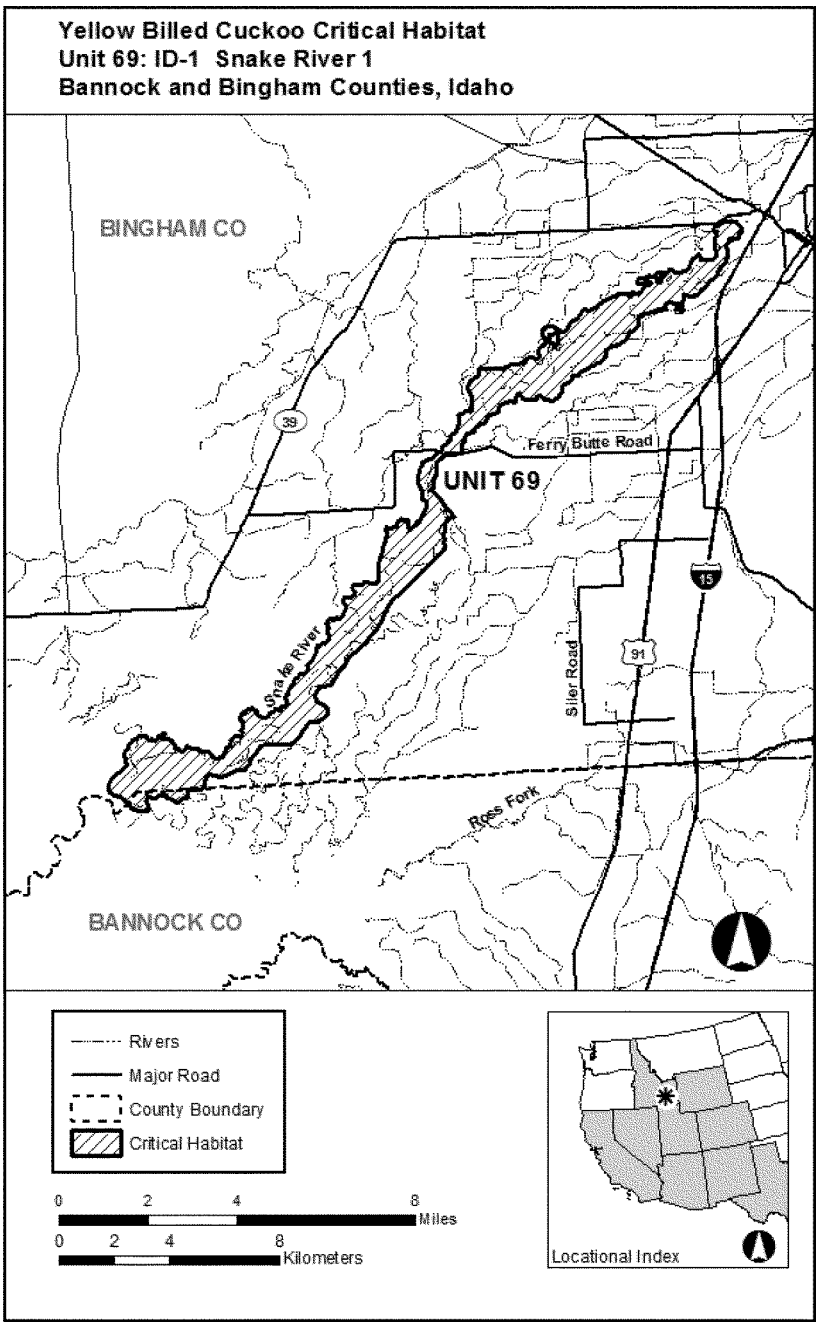


(76) Unit 68: UT–8, Virgin River 2; Washington County, Utah. Map of Unit 68 follows:

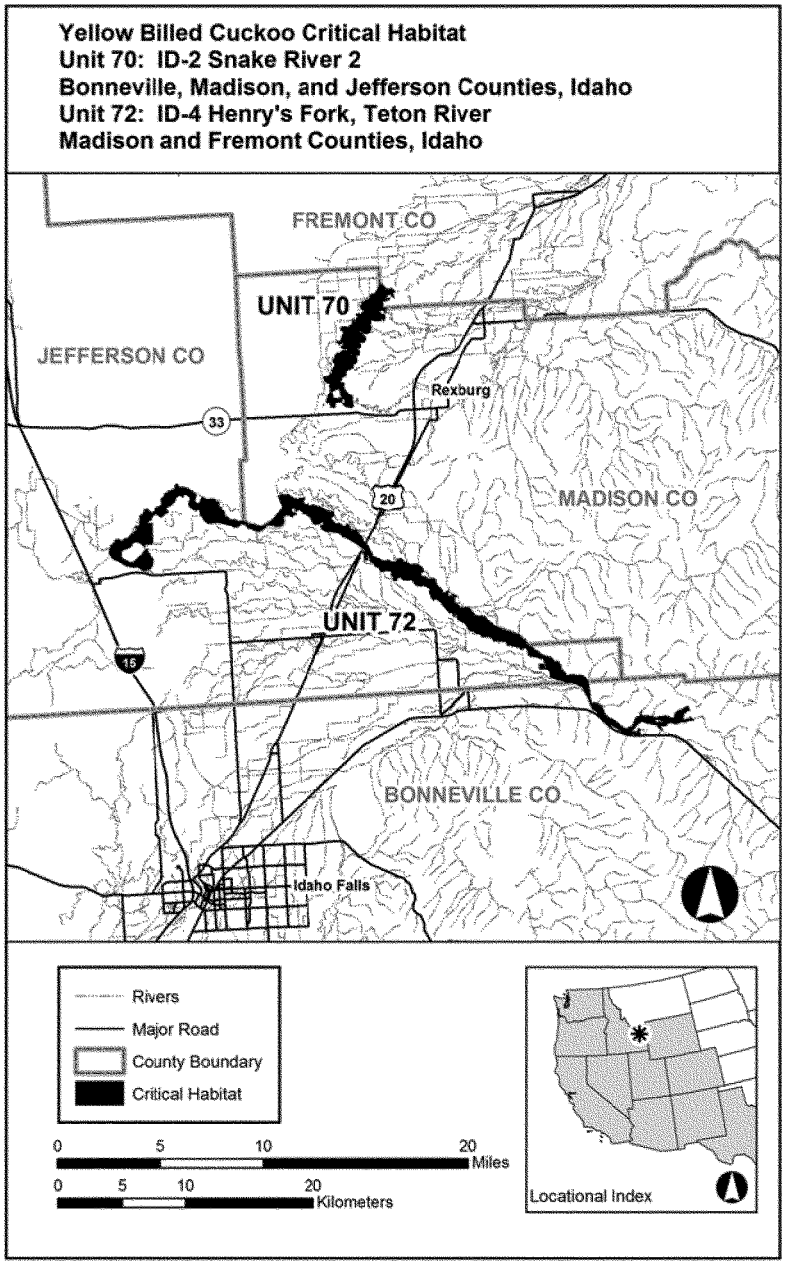


(77) Unit 69: ID–1, Snake River 1; Bannock and Bingham Counties, Idaho.

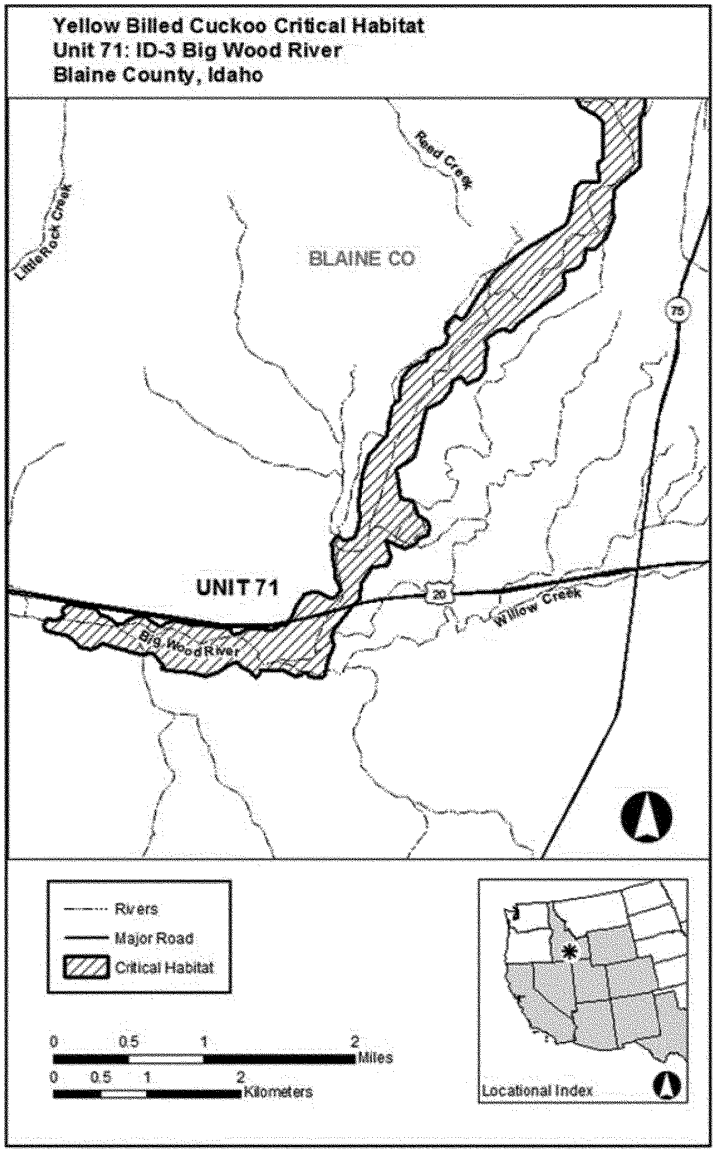
Map of Unit 69 follows:



(78) Unit 70: ID–2, Snake River 2; Bonneville, Madison, and Jefferson Counties, Idaho. Map of Units 70 and 72 follows:

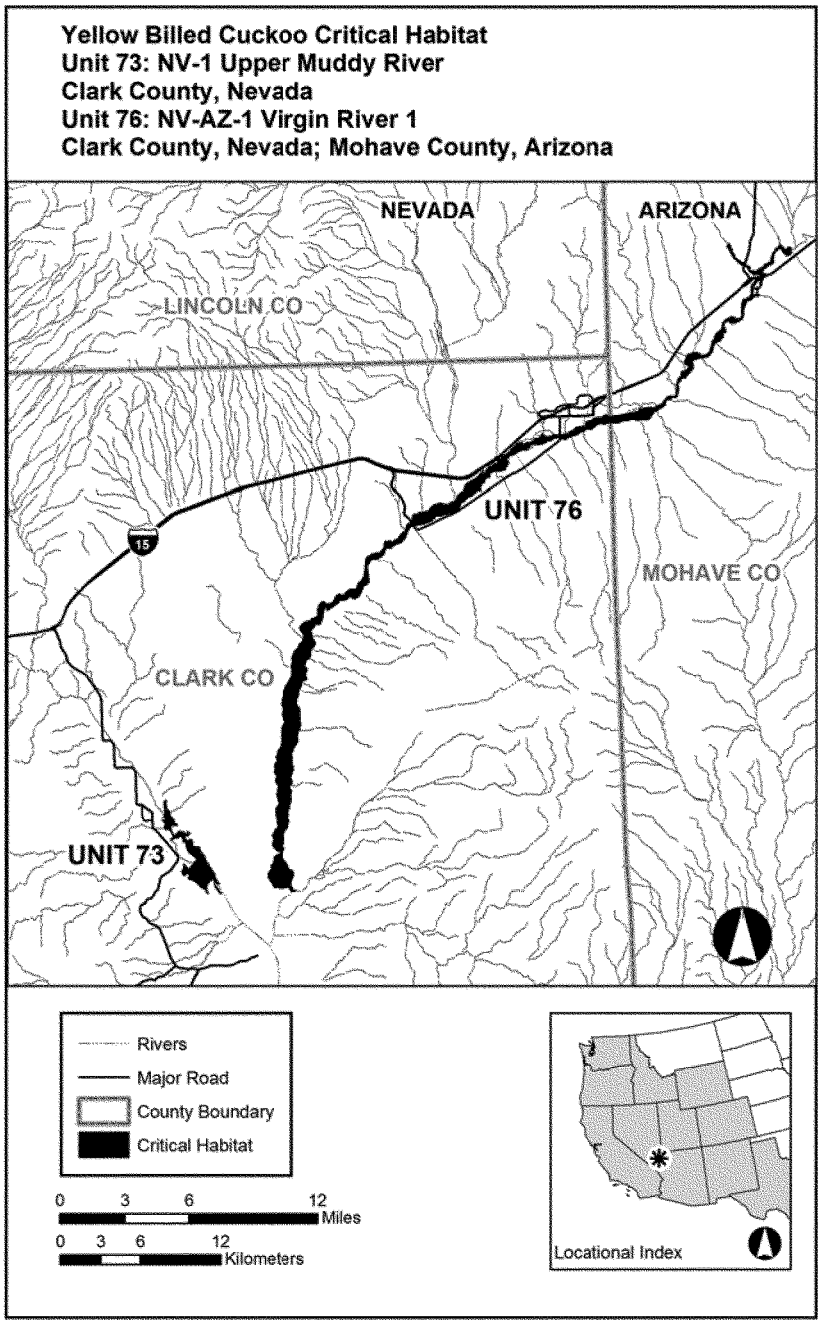


(79) Unit 71: ID–3, Big Wood River; Blaine County, Idaho. Map of Unit 71 follows:

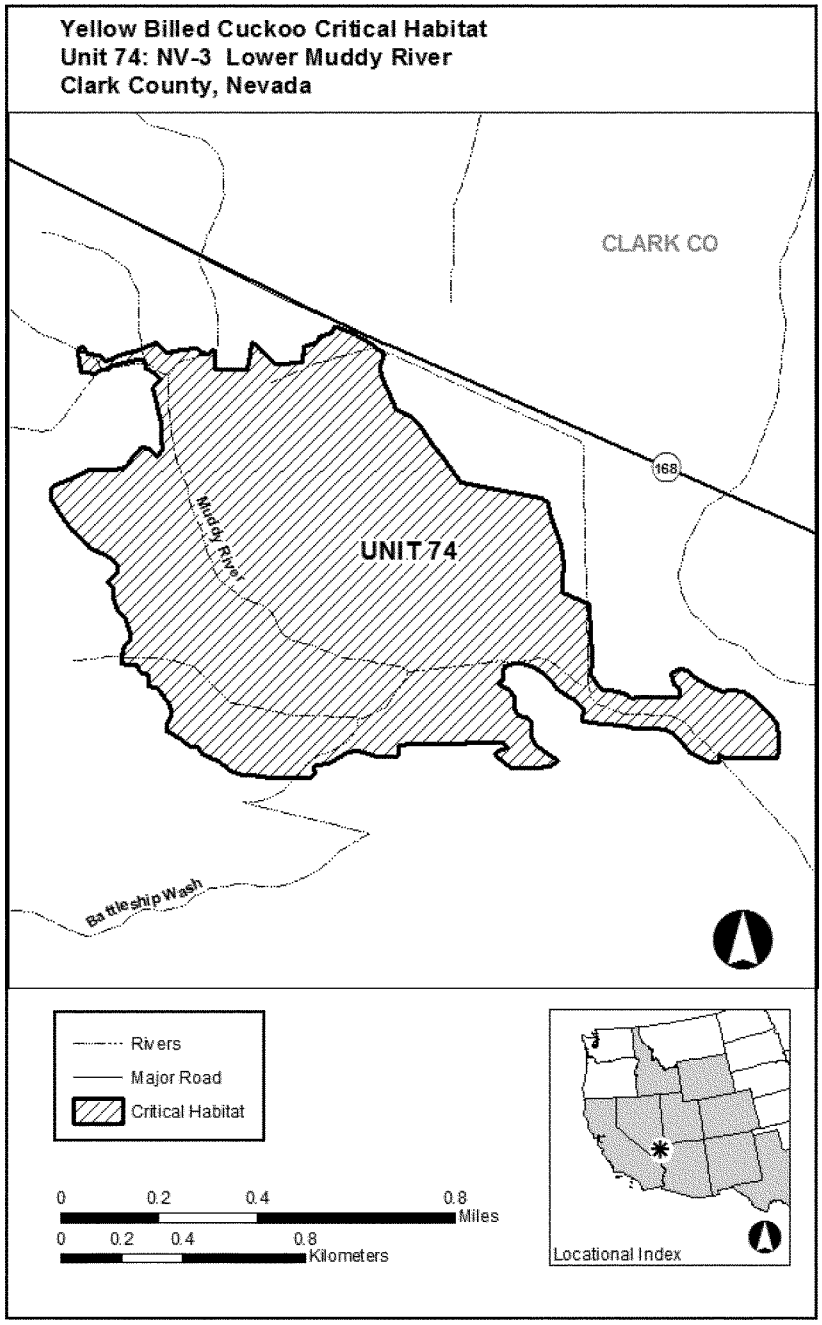


(80) Unit 72: ID–4, Henry's Fork and Teton Rivers; Madison County, Idaho. Map of Unit 72 is provided at paragraph (78) of this entry.

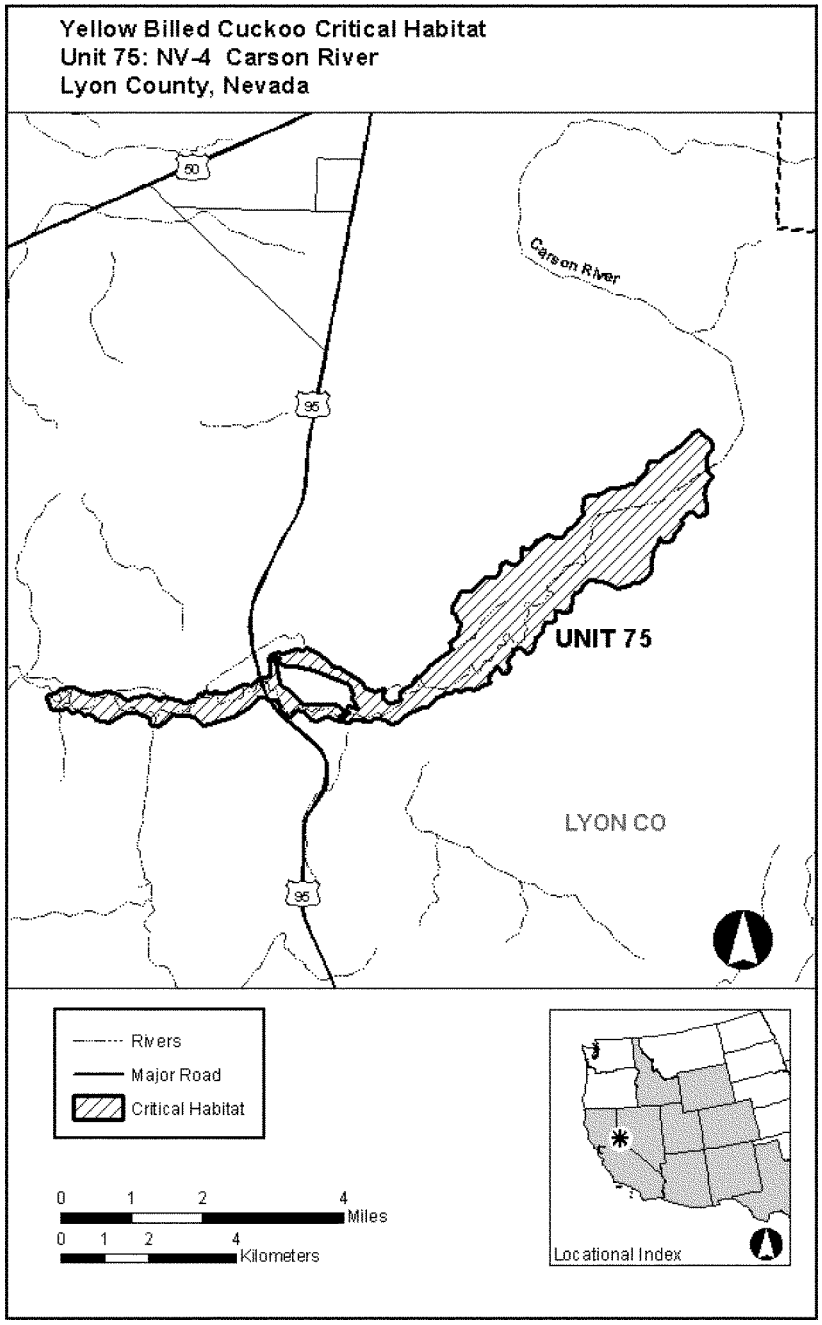
(81) Unit 73: NV–1, Upper Muddy River; Clark County, Nevada. Map of Units 73 and 76 follows:



(82) Unit 74: NV–3, Lower Muddy River; Clark County, Nevada. Map of Unit 74 follows:

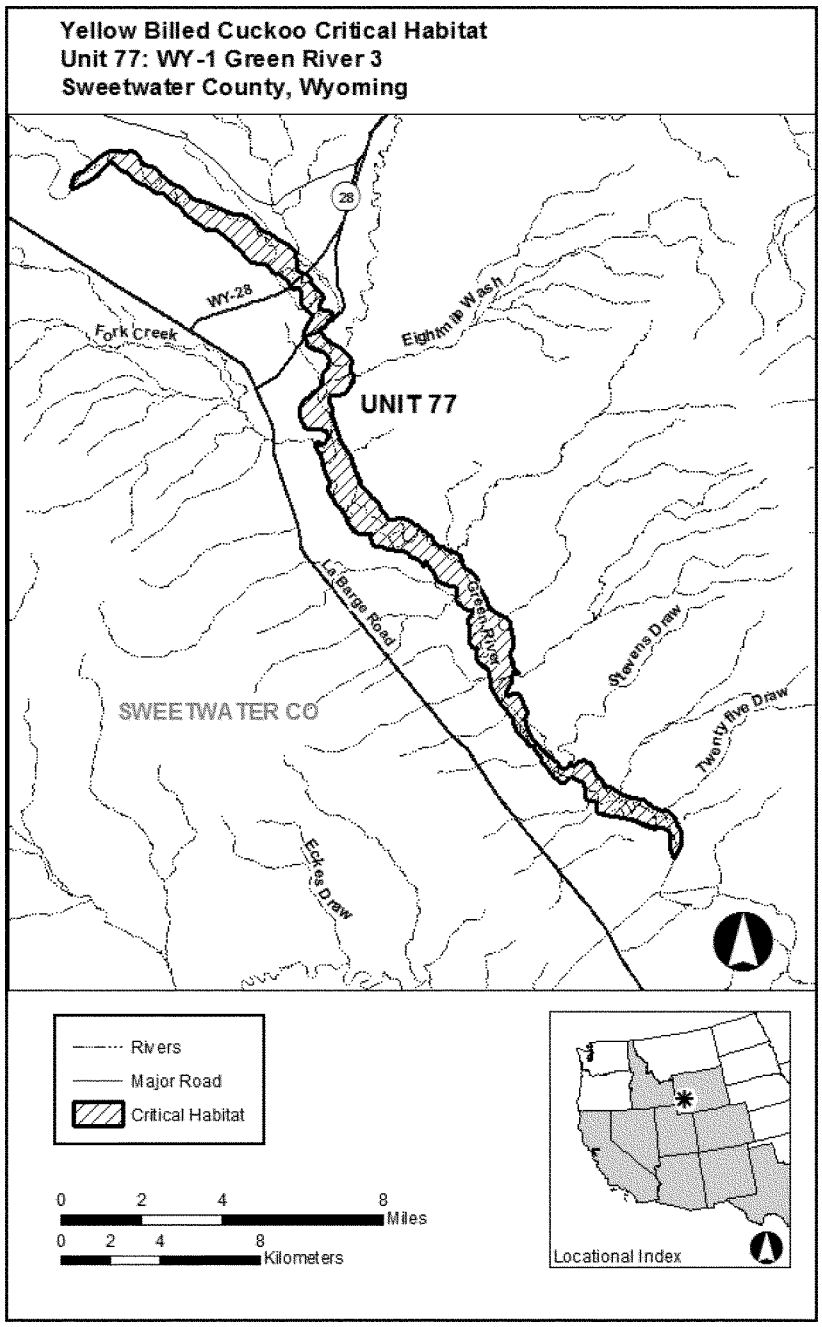


(83) Unit 75: NV–4, Carson River; Lyon County, Nevada. Map of Unit 75 follows:

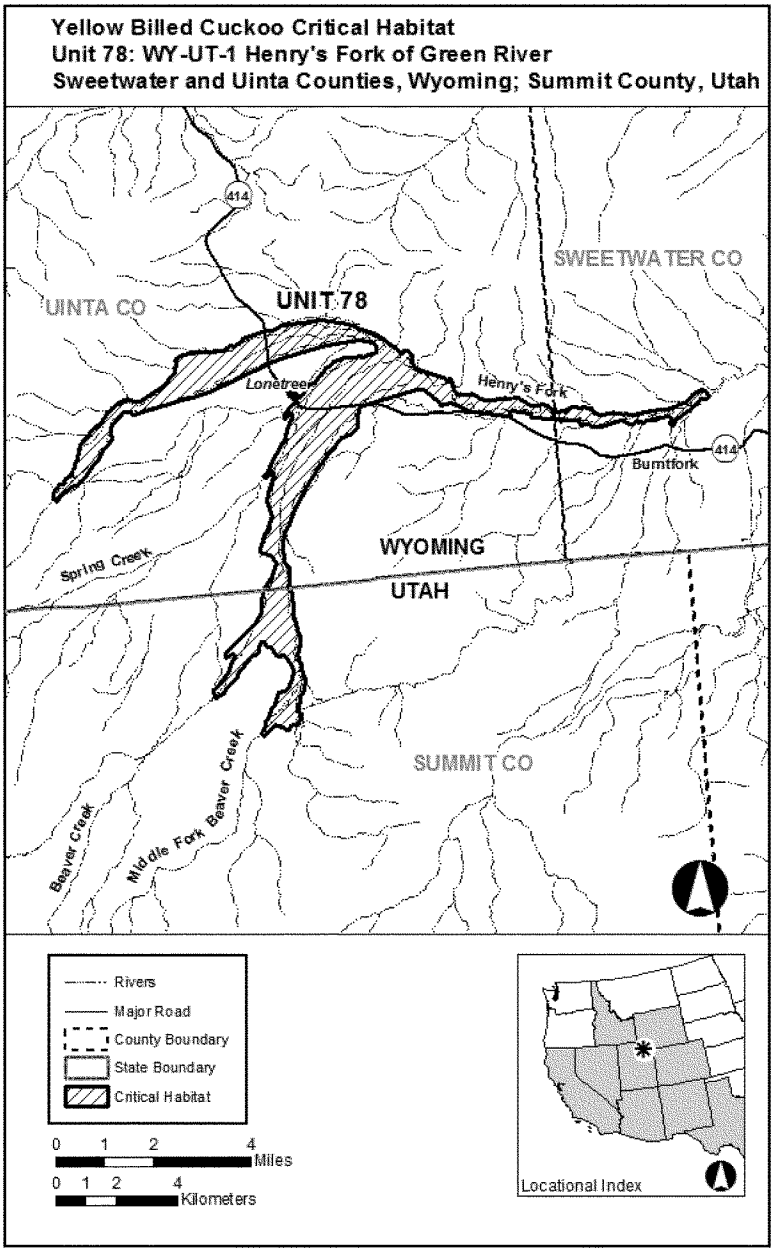


(84) Unit 76: NV/AZ–1, Virgin River 1; Clark County, Nevada, and Mohave County, Arizona. Map of Unit 76 is provided at paragraph (81) of this entry.

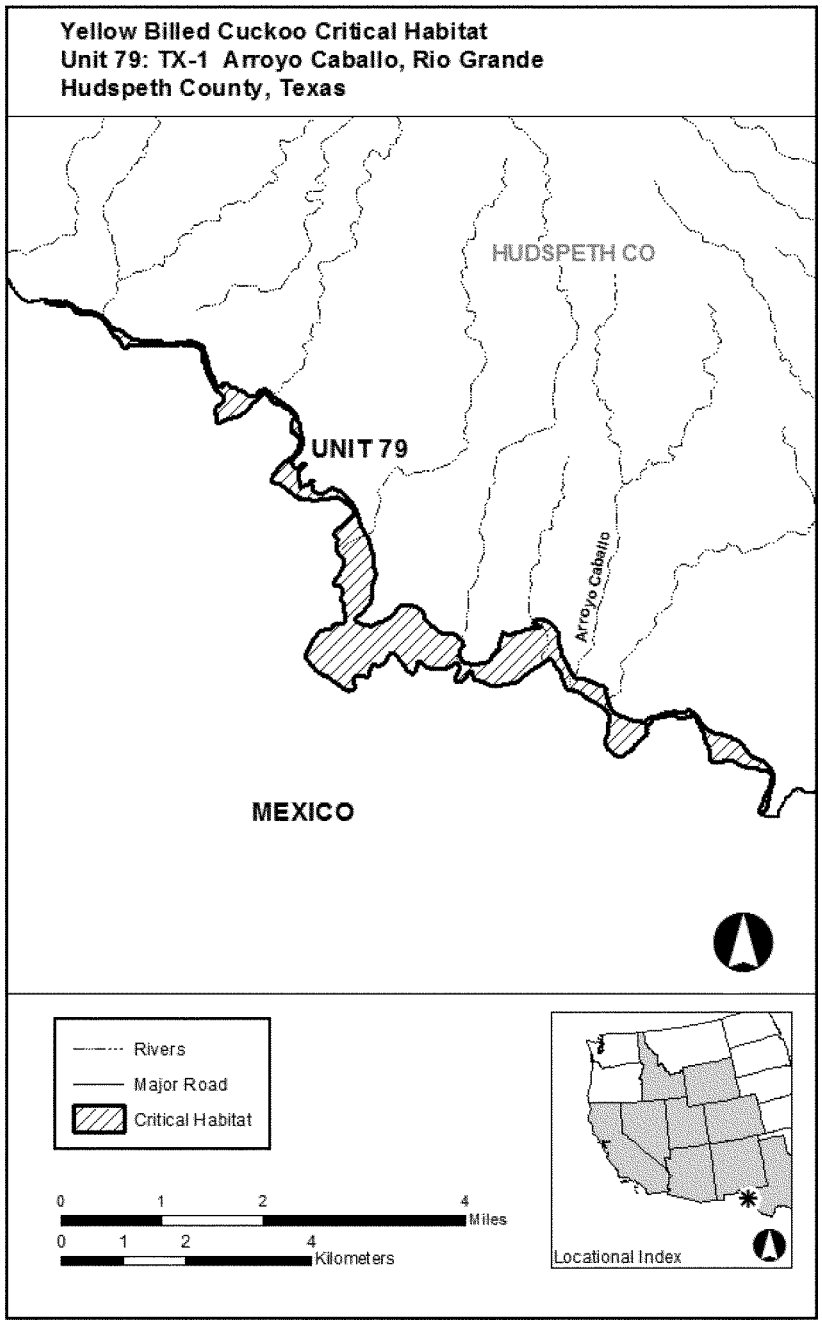
(85) Unit 77: WY–1, Green River 3; Sweetwater County, Wyoming. Map of Unit 77 follows:



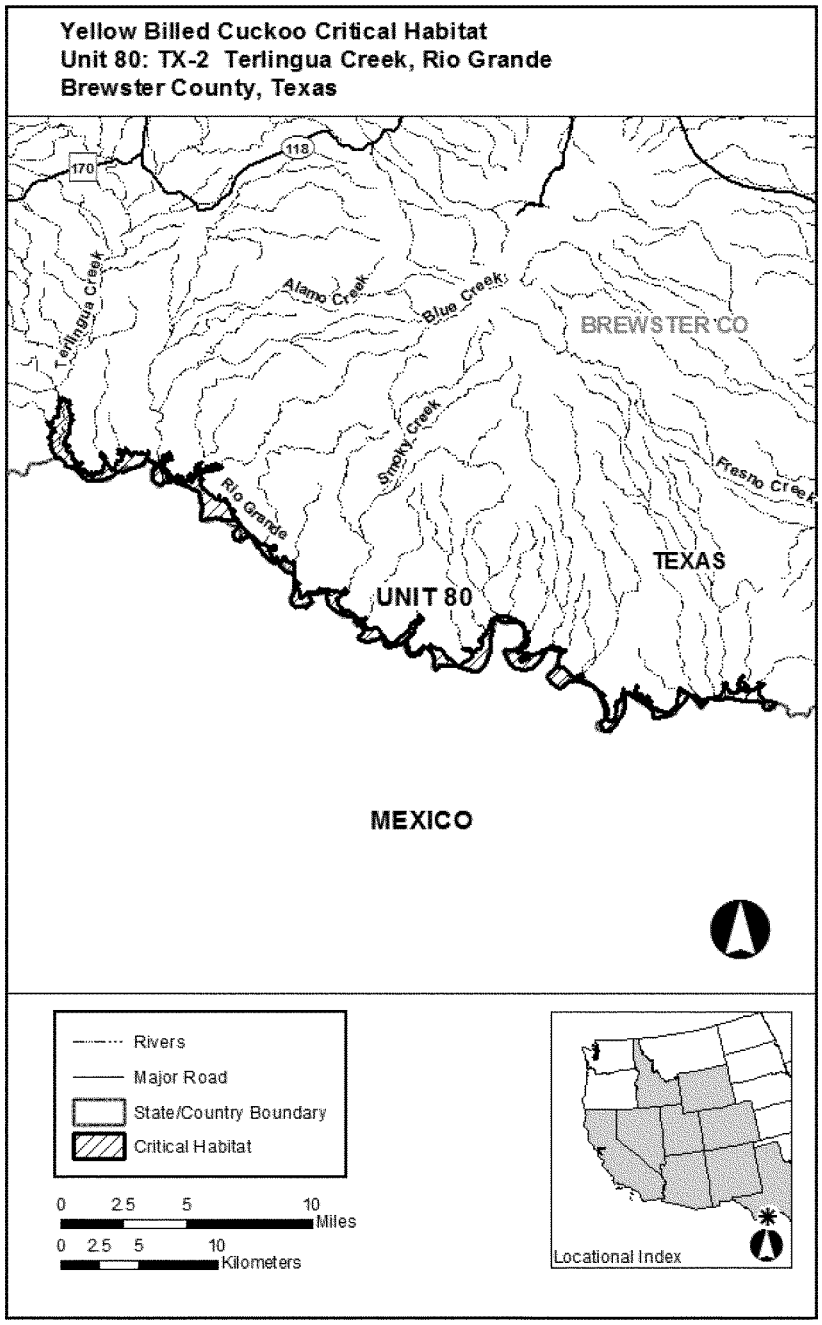
(86) Unit 78: WY/UT–1, Henry's Fork of Green River; Uinta County, Wyoming, and Summit County, Utah. Map of Unit 78 follows:



(87) Unit 79: TX–1, Arroyo Caballo, Rio Grande; Hudspeth County, Texas.
Map of Unit 79 follows:



(88) Unit 80: TX–2, Terlingua Creek and Rio Grande; Presidio and Brewster Counties, Texas. Map of Unit 80 follows:



* * * * *

Dated: June 13, 2014.

Signed: Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–19178 Filed 8–14–14; 8:45 am]

BILLING CODE 4310–55–C

Reader Aids

Federal Register

Vol. 79, No. 158

Friday, August 15, 2014

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

44635–45084 1
45085–45308 4
45309–45670 5
45671–46166 6
46167–46334 7
46335–46664 8
46665–46960 11
46961–47372 12
47373–47550 13
47551–48014 14
48015–48652 15

CFR PARTS AFFECTED DURING AUGUST

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:
9152 47549
Executive Orders:
13295 (amended by 13674) 45671
13673 45309
13674 45671
13675 46661
Administrative Orders:
Notices:
Notice of August 7, 2014 46959

5 CFR

581 46608
582 46608
831 46608
838 46608
841 46608
842 46608
843 46608
848 46608
870 46608
890 46608

7 CFR

610 44635
622 44635
625 44635
652 44635
662 44635
906 47551
945 45673
1260 46961
1412 46335
1455 44635
1465 44635
3201 44641
Proposed Rules:
457 44719
3560 47383

10 CFR

Proposed Rules:
429 46908
430 45377
431 ..... 45377, 46379, 46908
460 ..... 45731, 48097
1708 46720

12 CFR

1026 48015
Proposed Rules:
390 45380
701 46727

14 CFR

13 46964
25 ..... 44657, 44658, 46167, 46169, 46170, 46171, 46173
27 47553
39 ..... 44660, 44663, 44666, 44669, 44672, 44677, 45085, 45317, 45322, 45324, 45327, 45329, 45332, 45335, 45337, 45340, 46968, 48018, 48021, 48044, 48028, 48030
71 ..... 44679, 46175, 46180, 47556, 47557, 47559, 48032
97 ..... 46665, 46671, 46672, 46674
145 46971
1206 46676
Proposed Rules:
25 48098
39 ..... 44722, 45135, 45137, 45140, 45383, 45385, 46201, 47025, 47028, 47031, 47384, 47387, 47390, 47393, 47395, 47592, 47594, 47597, 48105, 48107
121 48098
129 48098
234 45731
244 45731
250 45731
255 45731
256 45731
257 45731
259 45731
399 45731

15 CFR

700 47560
732 45675
734 45288
738 ..... 45288, 45675, 46316
740 ..... 45288, 45675, 46316
742 ..... 45675, 46316
743 45288
744 ..... 44680, 45675, 46316
746 45675
772 ..... 45288, 46316
774 ..... 45088, 45288, 45675, 46316
801 47573
Proposed Rules:
801 47599

16 CFR

305 46985
Proposed Rules:
310 46732

17 CFR

230 47736
239 47736
240 47278
241 47278
250 47278
270 47736
274 47736
279 47736

Proposed Rules:
270 47986
274 47986

18 CFR

Proposed Rules:
40 47603

19 CFR

101 46348
201 46350

21 CFR

172 46993

22 CFR

126 45089

23 CFR

Proposed Rules:
790 45146

24 CFR

200 46181
2700 46181
3284 47373

25 CFR

Proposed Rules:
169 47402

26 CFR

1 ..... 45682, 45683, 48034
301 47246
602 45683

27 CFR

9 44687
447 46690
478 ..... 45091, 46690
479 46690
555 46690
646 46690
Proposed Rules:
9 46204
478 47033

28 CFR

Proposed Rules:
0 45387
2 47603
36 44976
90 45387

29 CFR

4022 48038
Proposed Rules:
1904 47605
1952 47605

30 CFR

943 45683

31 CFR

34 48039
Proposed Rules:
1010 45151
1020 45151
1023 45151
1024 45151
1026 45151

33 CFR

100 ..... 44689, 44693, 45092, 45093, 46997, 48063, 48065, 48067
117 ..... 44693, 44696, 45344, 45345, 46182, 46694, 47002
165 ..... 44698, 45686, 46695, 46697, 46997, 47004, 48070
Proposed Rules:
100 47040
117 ..... 44724, 46740

34 CFR

Ch. III 45346, 46700, 47575, 47579
Proposed Rules
685 46640

36 CFR

Proposed Rules:
51 45390

37 CFR

Proposed Rules:
370 ..... 45393, 45395

38 CFR

3 ..... 45093, 47585
4 45093
9 48071

39 CFR

121 44700
492 46183

40 CFR

49 46514
52 ..... 45103, 45105, 45108, 45350, 46184, 46351, 46703, 46707, 46709, 47004, 47377
60 48072
63 ..... 48072, 48073
70 45108
80 46353
81 45350
86 46356
122 48300
125 48300
180 ..... 45688, 45693, 48090
228 45702
300 ..... 47007, 47586
1039 46356
Proposed Rules:
52 ..... 44728, 45174, 45393, 45395, 45733, 45735, 46210, 46211, 46383, 46384, 46742, 46747, 47043
60 48111
63 48111
70 45174
80 46387
81 45735
82 46126
180 44729
300 ..... 47043, 47610

41 CFR

Proposed Rules
60 46562
61 46562

42 CFR

37 45110
412 ..... 45872, 45938
424 44702
447 45124
488 45628

44 CFR

64 46187
67 ..... 44704, 44706, 44707, 45124, 45125, 45127
206 46190
Proposed Rules:
67 ..... 44733, 46390

45 CFR

162 45128
Proposed Rules:
1149 47402

46 CFR

67 47015
502 46714

47 CFR

0 48442
1 48442
2 48442
15 48442
27 48442
54 45705
73 ..... 47380, 48094, 48442
74 48442
79 45354
90 45371
Proposed Rules:
1 45752
2 45752
27 45752
79 45397
90 45752
95 45752
96 45752

48 CFR

19 46375
204 45662
212 45662
225 45662
252 45662
Proposed Rules:
2 ..... 45408, 46748
3 45408
4 45408
5 45408
7 ..... 45408, 46748
8 45408
12 46748
14 45408
15 45408
16 45408
46 46748
52 ..... 45408, 46748
204 45666
209 45666
212 45666
225 45666
252 45666
1536 47044
1537 47044

49 CFR

107 46194
109 46194
171 46012
172 46012
173 46012
175 46012
214 45134
541 46715
579 47591
592 45373
Proposed Rules:
105 47047
107 47047
130 45016
171 ..... 45016, 46748, 47047
172 45016
173 ..... 45016, 46748
174 45016
179 45016
541 45412
571 46090
831 47064

50 CFR

17 ..... 44712, 45242, 45274, 47180, 47222
216 45728
622 48095
635 47381
648 ..... 45729, 46376, 46718, 47024
Proposed Rules:
17 ..... 45420, 46042, 47413, 47522, 48548
20 46940
216 44733
226 46392
600 46214
622 44735
635 46217
648 ..... 44737, 46233
679 ..... 46237, 46758

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 August 13, 2014

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.